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Supreme Court of the United States

October Term, 1964

No 51

UNITED STATES OF AMERICA,

Petitioner,

v.

ARNO SASCHA JAKOBSON,

Respondent.

ON CERTIORARI TO UNITED STATES COURT OF APPEALS FOR THE SECOND CIRCUIT

BRIEF FOR RESPONDENT

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ARNO SASCHA JAKOBSON,

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ON CERTIORARI TO UNITED STATES COURT OF APPEALS FOR THE SECOND CIRCUIT

BRIEF FOR RESPONDENT

Opinion Below

United States v. *Jakobson*, 325 F. 2d 409 (R. 27).[1]

Jurisdiction

The Judgment of the Court of Appeals was entered on November 22, 1963. Mr. Justice Brennan extended the time for filing a Petition for Certiorari to and including March 24, 1964. The Petition was filed March 20, 1964. On May 4, 1964 Certiorari was granted.

Jurisdiction of this Court is invoked under 28 U. S. C. 1254(1).

[1] Figures preceded by "R." refer to page of Record.

Questions Presented

(1) Whether the recommendation of the Department of Justice to the Appeal Board, on respondent's claim for a conscientious objector classification, that respondent was not opposed to participation in war by reason of religious training and belief, but that his claim was based on a personal moral code, was erroneous as a matter of law.

(2) Whether Section 6(j) of the Draft Act is constitutional, if the definition of a conscientious objector meant to exclude from its recognition the views stated by respondent in his claim for conscientious objector status.

(3) Whether the 1-A classification was without basis in fact.

Statute and Regulations Involved

Section 6(j) of the Universal Military Training and Service Act, 50 U. S. C. A. App. 456(j), insofar as it is pertinent to the facts of this case reads:

> "Nothing contained in this title shall be construed to require any person to be subject to combatant training and service in the armed forces of the United States who, by reason of religious training and belief, is conscientiously opposed to participation in war in any form. Religious training and belief in this connection means an individual's belief in a relation to a Supreme Being involving duties superior to those arising from any human relation, but does not include essentially political, sociological, or philosophical views or a merely personal moral code".

Section 1(c) of the Universal Military Training and Service Act, 50 U. S. C. A. App. 451(c) provides:

> "The Congress further declares that in a free society the obligations and privileges of serving in the armed forces and the reserve components thereof should be shared generally, in accordance with a

system of selection which is fair and just, and which is consistent with the maintenance of an effective national economy."

Selective Service Regulation, 32 C. F. R. Section 1622.1 (d) provides:

"In classifying a registrant there shall be no discrimination for or against him because of his race, creed, or color, or because of his membership or activity in any labor, political, religious, or other organization. Each registrant shall receive equal justice."

Selective Service Regulation, 32 C. F. R. Section 1626.25 (d) provides:

"(d) Upon receipt of the report of the Department of Justice, the appeal board shall determine the classification of the registrant, and in its determination it shall give consideration to, but it shall not be bound to follow, the recommendation of the Department of Justice * * *."

Constitutional Provisions Involved

Article I, Section 8 provides insofar as pertinent here:

"The Congress shall have Power * * *.

* * *

To declare war * * * To raise and support armies, * * * To provide and maintain a Navy; * * *."

Amendment I provides:

"Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof; * * *."

Statement

Respondent registered under the Draft Act on September 2, 1953, when he was 18 years of age and filed Form 100, the Selective Service Questionnaire, the same day. At that time, he made no claim for conscientious objector deferment, because he was not then a conscientious objector. Respondent made a claim for physical disqualification for a back injury in Series 15 of said Questionnaire (R. 6).

Respondent received various classifications in the processing of his case, as follows: 1-A on September 17, 1953; 2-S on March 31, 1955; 1-A in July 1955; 2-S on September 8, 1955 and 1-A on February 9, 1956, when he left school. Appearing for a physical examination on February 27, 1958, respondent was found acceptable for the armed forces and was so notified on March 26, 1958.

On April 18, 1958, respondent requested Special Form 150 for conscientious objectors, although the Department of Justice wrongly said he had requested it on March 26, 1958, when he was notified of his acceptability (R. 122). About six months before the order to report for a physical examination, respondent asked the Clerk of the local board what was necessary for one to get conscientious objector status. The clerk informed him he had to get letters from ministers, and had to have a long and overtly-provable pacifist background, that he had to belong to one of several accepted pacifist religions and submit proof thereof (R. 13, 14, 133). This caused respondent to be silent regarding his conscientious objector claim, until he later passed the physical examination. At that time, a Quaker unit informed respondent, that his conscientious objector claim was a valid one. Respondent then requested Special Form 150 and filed his conscientious objector claim. To this Form, he subjoined a detailed statement of his position (R. 44-54). At that time, respondent said he could accept non-combatant service. The local board ordered a hearing for December

9, 1958. At this hearing, respondent offered a 43 page statement, wherein he expanded his conscientious objector views and further noted, that he could no longer accept non-combatant service (R. 70, 71). The substance of all the statements on religion submitted by respondent shows that he believed in a Supreme Being, that he had religion and that he was opposed to participation in war in any form by reason thereof. These statements appear in more detail in connection with the main Argument herein, supported by appropriate citations as to religious training and belief, Supreme Being and other matters referred to in the definition of religious training and belief.

After the hearing, the local board found respondent sincere, but it held his views to be essentially sociological or philosophical or at most a merely personal moral code (R. 116). Further, the local board didn't think respondent's views showed duties as dictated by a Supreme Being superior to those arising from any human relation. The local board classified respondent as a conscientious objector for non-combatant service. The Government Appeal Agent said the board members were satisfied that registrant was honestly and properly a case for 1-A-O (R. 118).

When the appeal board received the file on May 4, 1959, it made a preliminary finding that registrant's claim for deferment based on religious training and belief had no merit.

The FBI submitted a report that was totally favorable to respondent's conscientious objector claim (R. 124-126). One of the references said respondent was of a religious nature (R. 126). Another reference said, registrant had said all religion should object to war and killing (R. 126). Registrant had with him at the appeal hearing a member of the faculty of the University of Massachusetts. The hearing officer held respondent's claim of conscientious objector wasn't based on religious training and belief but was a

personal moral code, and that he wasn't sincere in the claim (R. 122). Registrant received a copy of the Department of Justice recommendation, based on the hearing officer's report, and he replied (R. 130-135). In the Reply, respondent again spoke of his belief in a Supreme Being and of his religious position, and he expressed surprise at the charge of insincerity (R. 132). A request for a Presidential appeal was denied (R. 136).

The trial Court erroneously referred to respondent's lack of religious affiliations (R. 21, 25), and held respondent's views were not based on religious training and belief. The Court of Appeals, on the other hand, found respondent had a religion which resembled that of the great theologian, Paul Tillich (R. 36-38). It further said it would not have found respondent insincere on the cold record (R. 31). The Court below wasn't sure that the Court which had rejected the conscientious objector claim of Berman in the case of *Berman* v. *United States*, 156 F. 2nd 377 would have rejected respondent's claim (R. 36). (The definition of a conscientious objector as to religious training and belief was taken from the *Berman* case by the 1948 Act.) The Court further held it had to construe section 6(j) of the Act in favor of respondent's conscientious objector claim because of the grave constitutional questions involved, if his religion were not recognized within the Act (R. 35-38). Holding respondent's claim to be within the purport of the Act, the Court below reversed the Judgment of conviction for failure to take a step forward for induction into the military service (R. 39).

Summary of the Argument

ONE.

Beginning with the 1917 Draft Act, deferments for conscientious objectors were limited to members of pacifist Churches. In 1940, Congress passed a more liberal Act

by abolishing the need to belong to a Church or sect for conscientious objector status. The Court of Appeals for the Second Circuit construed the 1940 Act to allow conscientious objection on the basis of conscience, while the Court of Appeals for the Ninth Circuit disagreed and held religious training and belief meant belief in a Deity. The 1948 Act defined religious training and belief, to mean belief in a Supreme Being, but excluded essentially political, philosophical, and social views and a merely personal moral code. This definition followed the 9th Circuit in *Berman* v. *United States*, 156 F. 2d 377. Respondent believed in a Supreme Being, sometimes calling Him "Supreme Reality", "Godness" or "God". He belonged to no sect. His beliefs were not *essentially* political, philosophical, nor social, nor a *merely* personal moral code, as they were grounded in Deity. His belief in a Supreme Being is shown by his statement that the Supreme Being created man, that the Supreme Reality was the cause of man, that Godness was the cause of the Being of the Universe, and that God is Love. The change of the Name of Deity doesn't render the belief unacceptable, since most other religions use various Names for Deity.

Respondent said he acted by divinely-given reason, and substituted meditation and contemplation for prayers, calling it deep religion. Quotations bear out the truth of this deep religion. He said man is partly akin to the Supreme Reality and spiritual, and for that reason, he ascribes dignity and worth to man. Respondent's beliefs as to the Supreme Being's creation of man, Supreme Reality's being responsible for man's existence, man being partly akin to the Supreme Reality, and Godness being the Cause of the Being of the Universe resemble the teachings of the Old Testament.

Respondent said there were two kinds of relationship to Deity, one be called a vertical transcendental relationship, the other an horizontal transcendental relationship. The

former dealt with man's relation to Deity alone, while the latter entailed man's relation to his fellow-man, because of his belief in Deity.

Respondent's use of the Name, Supreme Reality, wasn't odd. Other religions use the word, Reality. Religions of India speak that way and the Nicene Creed uses the word, Reality. Various religions don't look at Deity in the same way. This is noted by non-Church goers. The words, Supreme Being, don't appear even once in the Old Testament or the New Testament. A strict construction would eliminate believers in the Old and New Testaments. Mohammedans use the Name, Allah, for Deity. We also find "Supreme Cosmic Ruler" and "Ormazd" by Islam and Zoroastrians. When respondent spoke of Godness, he expanded the Name of God. This is similar to saying Godhead or Godhood. As for Supreme Being, many religious and scholarly encyclopedias don't have these words in their indices. The Catholic Encyclopedia speaks of "Reality." The Court below spoke of respondent's belief in a Supreme Being.

Respondent's relation to Deity was responsible for his conscientious objection. He also showed superior duties to Deity. He spoke of the Givens in life, such as are given by Deity, while others are man-made.

The case of *George* v. *United States*, 196 F. 2d 445, 9th Cir. dealt with the meaning of the words political, philosophical, sociological and moral in the Draft Act, and said the Act excluded *certain* beliefs *not related* to religion. All religions make politics, philosophy, sociology, economics and morals a part of their teachings and program. Religious philosophy, sociology, economics, politics and morals are based on Deity, and do not come within the exclusion of the definition of religious training and belief. Philosophy was introduced into Christianity, Judaism and Islam, and the doctrine of Trinity is philosophy. The same goes

for Hinduism. The philosophy of religious experience is concerned about the problems of God and Reality.

Religion in the 20th Century has stressed social, economic, political, philosophical and moral works, as part of the religious Church program. Respondent has shown a similar concern. The Church stressed the social aims of Christianity. An outstanding member saw the Kingdom of God as a gradually evolving social order based on justice and righteousness. He analyzed social religion from the Prophets to Apostolic Christianity. Seminaries established chairs of Christian Sociology and Ethics. Churches adopted social creeds and brought Christian principles to bear on the economic and social order. The Federal Council of Churches adopted a Social Creed and the Catholic Church developed a social program. Ministers cried out for the social teaching of Jesus and the Hebrew Prophets and proclaimed the ethics of a Christian society. The Catholic Encyclopedia speaks of Christian social philosophy from the lips of Christ. Modern sociology doesn't have the same concern for man, that is the concern of the Divine Law. Political Science under Christian influence didn't lose sight of the Divine sanction of civil authority. Social Science grew out of the study and application of moral and social principles derived from the Revelation of God. Results established in the field of social sciences have the greatest importance for Christian ethics.

The Hebrew Religion played an important part in the development of social ideas since the time of Moses. Social progress is the supreme challenge of Judaism and the essence of Hebrew Prophecy. Worship of God must involve service of humanity for Judaism. Judaism stands for human rights at stake in every economic system.

Well-known religions emphasize ethics. The ethics of Jesus was standard Jewish ethics. A moral code grounded on Deity cannot be considered a merely personal one. It is personal, when held by the person without reference to

Deity. Reform Jews accept only the moral laws of the Bible. Catholics share in the moral teachings of the patriarchs and prophets. Congregationalists and Jews put emphasis on ethics in religious teaching.

Respondent showed his religious concern for man and peace. He believes in a "higher law". He believes in "Brotherliness" and "Altruism". The record shows these beliefs are related to Deity. Respondent also believes in the "Inner Light" and a spiritual world, a deeper or ultimate reality which caused him to believe in a Supreme Being.

Respondent said his Godness was similar to Gandhi's real presence of God within. He had read Gandhi and Tolstoi, both religious leaders. While respondent didn't know the nature of Deity, no religion makes claim to such knowledge. His religion corresponds to well-known religions. The various religions express themselves in different ways, and respondent's different kind of expression doesn't detract from his religion.

The recommendation of the Department of Justice was erroneous, when it said respondent's beliefs were a personal moral code, and not religious training and belief. This made the classification void. The recommendation also said the respondent was insincere in his claim for conscientious objector status. The appeal board didn't indicate which of the two recommendations it was following. It might have followed the erroneous recommendation. This again made the classification void. The Court below properly held respondent's classification may have rested on an erroneous ground.

Two.

Section 6(j) of the Draft Act is unconstitutional, if the definition of a conscientious objector meant to exclude from recognition the religious views stated by respondent

in his conscientious objector claim. Besides resembling beliefs of wellknown religions, respondent's beliefs resembled those of Paul Tillich, the noted Theologian.

Under the 1st Amendment, no right can be granted to one religion, that is denied to another. Even the Draft Act, section I(c) requires a fair and just classification, and the Selective Service regulations prohibit discrimination against a sect or religion. The Act permits no distinction between different kinds of belief in a Supreme Being. Otherwise, the Act would prevent the free exercise of religion in violation of the 1st Amendment. This is true, even considering Article I, section 8 of the Constitution, which provides for raising an army and navy. All provisions of the Constitution should be given equal force.

THREE.

The classification was without basis in fact. The local board found respondent sincere after a hearing. The FBI report was entirely favorable to the conscientious objector claim, and all references spoke in favor of the claim. The hearing officer found insincerity on the basis of unwarranted inferences. He gave a wrong date, when respondent asked for form 150, he stressed respondent's seeking 4-F, although he had a severe back injury, when he made that claim, and he failed to take notice of erroneous information given respondent by the Clerk of the local board about six months before the notice to respondent to appear for a physical examination. Respondent was wrongly told by said clerk, that he did not have a valid claim for conscientious objector deferment, as he had to have a pacifist background and letters from ministers. This erroneous information caused respondent to delay making his claim. The hearing officer also referred to respondent asking for I-O after requesting I-A-O. But a registrant may make successive claims to deferment, so long as they are made in good faith. The record shows they were made in good

faith. The Court below thought so, but it said the appeal board had to make the decision.

The fact that the local board found respondent honest in his claim carries weight. The appeal board never made an explicit finding on respondent's sincerity. Respondent's views developed over a long period. He couldn't have made his claim, until it had matured.

ARGUMENT

ONE

The recommendation of the Department of Justice to the Appeal Board, that respondent was not opposed to participation in war by reason of religious training and belief, but that his claim was based on a personal moral code, was erroneous as a matter of law.

A.

The history of the Drafts Acts shows the meaning of Religious Training and belief.

1.

The meaning of Supreme Being and belief by Respondent in a Supreme Being. Religions apply different names to Divinity. Respondent did this.

2.

Section 6(j) of the Draft Act intended to include political, sociological, or philosophical views and a moral code, if these views were based on belief in a Deity, within the meaning of religious training and belief. If the views were essentially political, sociological, or philosophical or a merely personal moral code, with no relation to Deity, then they were not included within the meaning of religious training and belief.

3.

One can believe in Deity without knowing the Nature of Him. Respondent's beliefs were not expressed in an orthodox style, but they were religious. The method of religious expression is different in all religions and sects. So are many of their beliefs. Respondent's beliefs met the standards of recognized religions.

4.

The Department of Justice made two recommendations to the appeal board. When it recommended that Respondent's views were a merely personal moral code, it made an erroneous recommendation. It also recommended that respondent was insincere in his claim. The appeal board did not indicate which recommendation it adopted in making its classification. This made the classification void, since it might have adopted the erroneous ground.

5.

The Government Brief concedes respondent had belief in a Supreme Being and had some obligations to Him. Its contentions that there was basis in fact to deny the claim of conscientious objector, because respondent showed no superior duties to a Supreme Being are not borne out by the record to which it has made reference. Besides, interpretation of a statute is one of law and not of fact.

A.

The history of the Draft Acts beginning with that of 1917 will show the intent of Congress in its use of the words "religious training and belief" in section 6(j) of the present Act.

The 1917 Draft Act, *40 Stat. Chap. 15, sec. 4* limited the deferment of conscientious objectors very narrowly. It granted deferment to those conscientious objectors who were members of historic peace-churches and having beliefs the same as the Church. The Act said it should not be construed:

> "* * * to require or compel any person to serve in any of the armed forces herein provided for who

> is found to be a member of any well-recognized religious sect or organization at present organized and existing and whose existing creed or principles forbids its members to participate in war in any form and whose religious convictions are against war or participation therein in accordance with the creed or priciples of said religious organizations".

The 1940 Act, section 5(g) took a more liberal view toward conscientious objectors by abolishing Church membership or the need to belong to any sect. It merely required that conscientious objectors have religious training and belief against participation in war. The pertinent part of sec. 5(g) of the Selective Training and Service Act of 1940 54 Stat. 889 read:

> "Nothing contained in this Act shall be construed to require any person to be subject to combatant training and service in the land or naval forces of the United States who, by reason of religious training and belief, is conscientiously opposed to participation in war in any form * * *"

There was no requirement that religious training and belief be according to traditional modes. Touching on this is the case of *U. S. ex rel. Phillips* v. *Downer*, 135 F. 2d 521, 2 Cir., 1943, wherein the Court said:

> "But if a stricter rule than that announced in the Kauten case is called for, one demanding a belief which cannot be found among the philosophers, but only among religious teachers of recognized organizations, then we are substantially or nearly back to the requirement of the Act of 1917 of membership in a well-recognized religious sect or organization whose existing creed or principles forbid its members to participate in war in any form * * * membership in an established church or the following of its beliefs was not intended as a requisite, a view repeated on the floor of Congress * * *"

That belonging to a sect or Church was not required, see the cases of *Bowles* v. *United States*, 319 U. S. 33, 1943 and *Berman* v. *United States*, 156 F. 2d 377, 381, 9 Cir.

In construing the 1940 Act, the 2nd Circuit in the case of *United States* v. *Kauten*, 133 F. 2d 703, 2 Cir. said:

> "(C)all it conscience or God, that is for many persons at the present time the equivalent of what has always been thought a religious impulse" (p. 708)

The 9th Circuit disagreed with the *Kauten* decision in the case of *Berman* v. *United States*, 156 F. 2d 377, 9 Cir., 1946. The *Berman* case held religious training and belief must be related to a Supreme Being or Deity. The *Berman* case became the authority for the definition of religious training and belief, when Congress, in adopting the 1948 Draft Act, referred to the *Berman* case.

It will be shown, that respondent's beliefs met the definition of religious training and belief, as given in the *Berman* case. The case of *Berman* v. *United States*, 156 F. 2d 377, 9 Cir., *supra*, discloses that philosophy or social belief is not considered religious training and belief without relation to Deity, while a belief in a Supreme Being is religious training and belief. A brief quotation from the *Berman* case at page 380 bears this out:

> "• • • However, no matter how pure and admirable his standard may be, and no matter how devotedly he adheres to it, his philosophy and morals and social policy without the concept of Deity cannot be said to be religion, in the sense of the term as it is used in the statute. It is said in State v. Amana Society, 132 Ia. 304, 109 N. W. 894, 898, 8 LRANS 909, 11 Ann. Cas. 231: 'Such a scheme of life designed to obviate such results (Man's inhumanity to man), and by removing temptations, and all inducements of ambition and avarice, to nurture the virtues of unselfishness, patience, love and service ought not to be denounced as not pertaining to re-

> ligion, *when its devotee* regards it as an essential tenet of their religious faith' ".

Abundant evidence in the Selective Service file shows respondent met the conscientious objector requirements of the *Berman* case and its definition of Religion given at page 381, as expounded in *Funk & Wagnall's New Standard Dictionary* and *The Encyclopedia of Social Sciences.* In meeting the standard of the *Berman* definition, respondent met the requirements of the 1948 Act. The first sentence of the 1948 Act was a reenactment of the 1940 Act, while the second sentence was an adoption of the definition of religious training and belief, as set forth in the *Berman* case. This is verified by the *Senate Report, No. 1268-80th Congress, 2d Session,* at page 14:

> "(j) Conscientious objectors:—This section reenacts substantially the same provisions as were found in subsection 5(g) of the 1940 Act. Exemption extends to anyone, who, because of religious training and belief in his relationship to a Supreme Being, is conscientiously opposed to combatant military service or to both combatant and noncombatant military service. (See U.S. v. Berman, 156 F. 2d 377, *cert. den.* 329 U. S. 795) * * *"

The House of Representatives *report No. 1881-80th Congress, 2nd Session* sets forth in parallel columns the provisions of the 1940 Act which would be repealed or amended by the 1948 Act. It showed no repeal or amendment of the provisions for conscientious objectors. This would mean that the new language in the 1948 Act added nothing to the 1940 Act.

In *Berman* v. *United States,* 156 F. 2d 377, 9 Cir. the defendant had a high moral and social philosophy against participation in war, but his failure to have belief in a Deity caused the Court to uphold denial of his claim. The Court below noted this (R. 36). At bar, respondent does have religious beliefs against participation in war, based

upon belief in a Supreme Being. Belief in Deity is the dividing line. Such beliefs do not have to be stated in the language of an orthodox religion. The statute is not one of orthodoxy, *Dickinson* v. *United States,* 346 U. S. 389, 395, and adherence to a sect is no longer required. The trial court erred in saying one has to belong to a sect (R. 21, 25).

It should be noted that the 1948 Act uses the words "*essentially* political, sociological or philosophical views or a *merely* personal moral code" (Emphasis supplied). The word "essentially" meant such views without belief in a Supreme Being, and "merely" meant a personal moral code having no relation to a Supreme Being. This is even shown in the case of *George* v. *United States,* 196 F. 2d 445, 450, 451, 452, 9 Cir. At page 452 the Court said:

> "So catholic a definition cannot be considered restrictive because it may not be broad enough to include, and actually excludes *certain* political, sociological, moral or philosophical theories unrelated to religion". (Emphasis supplied)

Thus the Court said, that certain philosophy, etc. do not meet the requirements of the Act, because they have no relation to religion. It meant there is a difference between theories that are based on belief in Deity and those that are not. Since the 1948 Act was a substantial reenactment of the 1940 Act, the following remarks by the Selective Service System appear to be appropriate on this point. See *Special Monograph No. 11, Vol. I "Conscientious Objection"*, Selective Service System, Gov. Printing Office, 1950 at page 141:

> "Additionally and especially in view of the many discussions during the war years on the congressional intent of the 1940 law, a memorandum given to the system by Paul Comly French, field secretary of the Friends War Problems Committee, under date of October 23, 1940, is very significant. This was written as a suggested guide for local boards in class-

ifying conscientious objectors. It is particularly important because it reflects the thinking of an individual who not only held a prominent position among the representatives of a large group of objectors but who also was closely connected with the writing of some of the most essential parts of the conscientious objection provisions. It reads as follows:

"'A person shall be deemed conscientiously opposed to war in any form if in good faith and in conformity to his sense of right and wrong or in conformity to the dictates of his conscience he objects to war or to the preparation for war. The opposition of such persons shall be deemed to be based upon religious training and belief if such opposition is accepted by such individual as a part of the belief, faith or doctrine of any religious denominations, sect or organization of which he is a member, or if arrived at as a result of other religious training as herein defined or as a fixed belief through ethical or moral considerations. Religious training shall include any training whether conducted individually or in classes or groups, through courses of study or individual or other forms of instruction, which has for its purpose the recognition, service and adoration of God or a god and the development of a way of life based upon a conception of man's relation to God or a god and to his fellow men.'".

Hasting's Dictionary of the Bible, Vol. 3 page 849 marks the distinction between "philosophy" and "religion":

"Religion provides the solution which philosophy seeks. That which is the quest of philosophy is the realized experience of Religion * * *"

"* * * Religion discovers the principle for which Philosophy has been seeking, and exhibits it, not as a theory, but as a power, in the freshness and originality of actual life, transforming character and inspiring service * * * Religion, at the same time has to consider the intellectual synthesis to which its own inspiration has given birth".

See also "Empirical Philosophies of Religion", by James Alfred Martin, Jr., 1947, pp. 25, 26:

> "* * * It is here that religion takes the issue out of the hands of philosophy. For religion in its historical forms is empirical; it appeals to the realistic temper: it deals with facts. Its function is not to prove God but to announce Him * * * it appeals only to man's power to *recognize what he needs in what is real*. Hence religion calls upon every man for an individual and ultimate 'I believe' which means * * * 'I see' ".

Respondent used various names to express Deity. He used the words, "Supreme Being", "Supreme Reality", "God" and "Godness". He also referred to his "divine reason". The petition for Certiorari at page 8 didn't think that respondent's concept of "Supreme Realty" or "Godness" came within the purview of "Supreme Being". The following discussion will show respondent did believe in a Supreme Being.

1.

The meaning of Supreme Being and belief by Respondent in a Supreme Being. Religions apply different names to Divinity. Respondent did this.

Respondent said he believed in a Supreme Being (R. 44, 131). In Special Form 150, he said "Being" was the same as "that which is" or "reality", and the Supreme Being is the "Creator of Man". Respondent also indicates that the "Supreme Reality" created man, and that he is the same as the Supreme Being (R. 44). He also used the word "Godness" to show belief in Deity. He says: "Godness is That Which is the Ultimate Cause for the fact of the Being of the Universe" (R. 73). It will be shown that most religions express Deity under a variety of Names and some speak of "Reality" and "Ultimate Cause". The requirement of the Draft Act is belief in Deity and not the kind of Names given Deity. The case of *Berman* v. *United States*,

156 F. 2d 377, *supra*, uses several Names for Deity, such as God, Supreme Power, Supreme Being, Deity, superhuman power and supernatural powers, some of them being quoted from a Dictionary. Respondent refers to Deity as God (R. 129), and even likens his conception of Godness to Gandhi's expression of feeling the "real presence of God within" (R. 127). Respondent's conception of "inner light", "Ultimate Reality" and "Supreme Being" (R. 131) will be shown to correspond to the Quaker belief.

When respondent referred to the Supreme Being as the Creator of Man, he had no reference but to Deity (R. 44). He also said man is the result of the Supreme Reality. These statements of religion can be equated with the Old Testament, Genesis 1:27. This said God created man. Certainly, no one but Deity can be the Creator of man. Respondent's religious quest was to seek knowledge of man who was created by the "Supreme Reality", and he sought this by searching for moral standards which his divinely-given reason could accept (R. 44). When he spoke of the Creator of Man and of divine reason, respondent had no concept other than Deity. The word "divine" refers to Deity. *Webster's 3rd New International Dictionary*, 1964 at p. 663 defined the word "divine":

> "la: of or relating to God: proceeding from God * * *."

The Court below recognized respondent's reference to Deity, when it said he came closer to a traditional reading of "Supreme Being" than did Paul Tillich, because of his acceptance of a Creator and supreme existence (R. 38, note 6).

Respondent substituted meditation and contemplation for prayer and ritual, and called this "religious experience" in the highest sense, involving a relationship with the Supreme Reality and man (R. 44). That meditation and

contemplation are deep religion will be later developed in connection with a discussion of well-known religions.

Respondent further says, that man is partly spiritual and partly akin to the Supreme Reality. Because of this, he ascribes dignity and worth to each person, and says man must be free to develop values with the use of the divine gift of reason (R. 45). The Bible says God created man in His image, Genesis 1:27. Respondent's belief is quite similar. Developing values with the divine gift of reason refers to reason given man by God.

When respondent said Godness is "That Which is the Ultimate Cause for the fact of the Being of the Universe", he wasn't expressing anything odd or strange. This is the effect of the Bible, Genesis 1:1 *et seq.* Other religions say God was the Cause of the universe. This will be developed later.

Respondent says, that to deny Godness is to deny the fact of the Being of the Universe. This certainly refers to the denial of Deity (R. 73).

As for a relationship with Deity, respondent says Godness also exists in feelings, such as a "vertical transcendental relationship" and an "horizontal transcendental relationship" to Godness. The former relationship deals with one's direct contact with Deity, while the latter deals indirectly with Deity and towards humanity (R. 73, 74). Respondent says "God is Love" (R. 129). There's nothing odd about this in connection with religion.

The fact that "Supreme Being" becomes respondent's "Supreme Reality", Godness, and God cannot change his clear reference to the same Deity of all religions. Many "Appellations" are given by well-known religions to Deity. In making reference to Deity and various "Appellations" the "Jewish Encyclopedia", Vol. VI, p. 1, 1906 ed. by Funk & Wagnall shows that respondent's belief in a Cre-

ator, Cause of the Universe and Reality were part of the Hebrew Religion. It says:

> "The Supreme Being, regarded as the Creator, Author and First Cause of the Universe, the Ruler of the world and of the affairs of men, the Supreme Judge and Father * * *. Biblical data: 'God is the rendering in the English versions of the Hebrew "El", "Eloah", and "Elohim"'. The existence of God is presupposed throughout the Bible, no attempt being anywhere made to demonstrate His reality * * *"

The "International Standard Bible Encyclopedja", 1960, Vol. 2, by William B. Erdman Pub. Co., at p. 3(2) gives many attributive Names of God in Hebrew and English. It adds to the above the Names "Elyon", "Shadday", Cur, meaning Rock, Abhir, meaning "the Strong One", melekh or King, Adhon or lord, ba'al or proprietor or master, and Jehovah.

If we couldn't change the words "Supreme Being" to another word to mean Deity, we would have to find fault with the Hebrew Religion to exclude Hebrew conscientious objectors, and with Jesus Christ who used the Name, "Father", to indicate Deity. On this, *"The International Standard Bible Encyclopedia,"* op. cited, at p. 1261 says:

> "4(1) In the teaching of Jesus Christ-God is preeminently the Father. It is his customary term for the Supreme Being, and it is noteworthy that Jesus' usage has never been quite naturalized. We still say 'God' when Jesus would have said 'the Father' * * *. Such is the general character of God as expressed in His Fatherhood, but it is realized in different ways by those who stand to Him in different relations".

Continuing at page 1262:

> "(2) * * * John's one idea, that God is love, is but an abstract statement of His fatherhood * * *.

> "6(2) Love is the most characteristic attribute of Fatherhood * * * Love is not only an emotion of tenderness and beneficence which bestows on men the greatest gifts, but a relation to God which constitutes their entire law of life. It imposes upon men the highest moral demands, and communicates to them the moral energy by which alone they can be met * * *."

Respondent also said "God is Love" (R. 129).

Continuing at page 1265, "The International Standard Bible Encyclopedia", *supra,* says of "New Testament Names of God":

> "The variety of names which characterizes the Old Testament is lacking in the New Testament where we are all but limited to two names, each of which corresponds to several in the Old Testament. The most frequent is the name 'God' occurring over one thousand times and corresponding to El, Elohim, etc. of the Old Testament * * *, but in this true sense it expresses essential Deity * * *."

Continuing at page 1268, it says:

> "The fundamental meaning of 'Godhead' is, nevertheless, no less than that of 'Godhood,' the state, dignity, condition, quality, of a god, or, as monotheists would say, of God * * *. As 'the Divinity,' 'the Deity,' so also 'the Godhead' is only another way of saying 'God' except that when we say 'the Divinity,' 'the Deity,' 'the Godhead,' we are saying 'God' more abstractly and more qualitatively, that is with more emphasis, or at least with a more lively consciousness of the constitutive qualities which make God the kind of being we call 'God.'"

Just as "Godhead and Godhood" are variations of "God," so is respondent's "Godness."

Even the religions of India speak of God in different ways, and they also speak of "Reality." "*A Dictionary of*

Religion & Ethics, ed. by Shailler Mathews & Gerald B. Smith, 1921, says at page 185:

> "IV. God as the Metaphysical Ultimate. The most thoroughgoing elaboration of this conception of God is found in the religious thought of India. In contrast with the more militant attitude of the west, which found expression in the conception of an all-powerful God imposing his purpose on humanity, Indian thought was contemplative and mystical. In the Vedas the gods are expressions of nature forces rather than terrible deities. In the Brahmanas there is a groping after one unified conception of divine Being which shall underly the character of any god. Prajapati is called the 'lord of creatures.' In the Upanishads there is developed the conception of Brahman, who is the ultimate, self-existent *reality*, the unchangeable indissoluable Being, the highest existence that can be conceived. Brahman is the unseen, intangible power which brings into existence all that is and which maintains their existence, but is itself eternally distinct from all phenomenal *reality* * * *. Thus the eternal divine is a spiritual metaphysical something discoverable only as one penetrates far beneath the surface appearance of human experience and apprehends the indefinable, ultimate, all-pervasive, all-inclusive, self-existent power. In the Vedanta philosophy this metaphysical conception of God is characterized by a systematic contrast between the nature of Brahman and the nature of the world of our experience. The nearest approach to a true description of Brahman is attained by saying that it is *not* like anything found in the world. This contrast is pushed so far that the religious man, in affirming the *reality* of Brahman, must also affirm that the world of his empirical knowledge is illusion (maya)". (Emphasis supplied)

> "In the logically complete philosophy, the absolute perfection of God is secured at the expense of any definite positive relationship between God and the world of our common experience. From the point of view of speculative refinement, all finite and anthropomorphic traits are eliminated from the

> *divine* nature. But this very metaphysical completeness of God relegates him to a realm of non-human existence and makes human participation in his being possible only by a rigorous discipline of mystical knowledge which necessarily abandons the world of every-day life. Consequently, the religion of ordinary people consists of trust in the efficiency of popularly conceived deities. Modern Hinduism has so far been influenced by the demands of practical religion that it includes Vishnu, Shiva, and the personalized Brahma as the trinitarian manifestation of Brahman * * *." (Emphasis supplied)

Thus we find that neither Christianity, Judaism nor Hinduism use but one Name to express Deity; nor do they have but one way of belief. For instance, Harry Austryn Wolfson in "*The Philosophy of the Church Fathers,*" 1956, says at page 334:

> "* * * In this Creed, [Nicene] while the individual reality of the three members of the Trinity was stated with unmistaken clearness, no special term is used as a designation of this reality and individuality * * *."

Also, Leo Rosten, in "*Religions in America,*" 1963, says at page 24:

> "Protestantism embraces a variety of doctrines. Some Protestants are closer to Catholic beliefs than others * * *."

At page 115, he says:

> "* * * Lutherans worship God alone. They do not pray to the Virgin Mary or to anyone but God."

Compare this with the statement at page 25:

> "Catholics pray to God through Mary * * *."

Yet the Lutherans, p. 117 op. cited, and the Catholics, p. 23 op. cited, each believe theirs is the only true religion.

And at page 116 the Lutherans say: "God the Father is our Creator." On Christian Science at page 39, we read:

> "What is the Basic Premise of Christian Science?"
>
> "That God is divine Mind, the conceivor of man and the universe, and Mind is all that exists. Mind expresses itself and its expression is man.
>
> "Spirit is eternal and real • • •."

Respondent expresses himself similarly, as to the conceivor of man (R. 44), spirit and reality (R. 127, 131). Christian Science continues at page 40:

> "Man and the universe are made in the image and likeness of the divine Mind, God, which conceives them. Mind is synonymous with Spirit, Soul, Life, Truth, Love, Principle (which means cause or origin)."

Respondent spoke likewise as to Deity (R. 45), Love (R. 129) and Spirit (R. 127, 131). Thus Christian Science uses many Names to express Deity. They should not be excluded from the definition of belief in a Supreme Being for that reason.

Rosten, op. cited, says at page 96:

> "Jehovahs Witnesses believe Jehovah God is the only true God."
>
> "Jehovahs Witnesses believe that Jehovah God and Christ Jesus are two distinct persons and are not combined with a so-called 'Holy Ghost' in one godhead called a 'Trinity.'" (p. 97)

On the question of Trinity, *Rosten,* op. cited, says at page 123:

> "Methodists do not pretend to understand fully the meaning of the Trinity. Who does? Even St. Augustine, after writing the classic exposition of the doctrine of the Trnity, confessed that it still re-

mained a mystery. If God could be fully explained, he would cease to be God."

"• • • We conceive of God as Creator, the First Cause of all things—as God the Father• • •."

"• • • • God is Love • • •." (p. 124)

This doesn't sound different from respondent's "Creator of Man" (R. 44), "The Ultimate Cause for the fact of the Being of the Universe" (R. 73), and "God is Love" (R. 129).

When we read *Rosten*, op. cited, at page 128 we find that religion is not static nor the same with all sects. He says:

"• • • Within the 40,000 American Methodist Churches, there is probably as wide variation of types of thought and worship as there is between Methodists, Presbyterians, Congregationalists and others."

On the question of creation and Reality, *Rosten*, op. cited, refers to Episcopalians at page 362 thus:

"In the light of man's experience of God's working in the world, it is seen that God *is* as He *reveals* Himself. He is *Creative Reality* (God and Father) • • •." (Emphasis supplied to last two words).

So we find that respondent is not innovating, when he uses the word "Reality" to refer to Deity. Even the Unitarians refer to "Reality." See *Rosten*, op. cited, page 352:

"Unitarians follow no formal or central creed. Freedom of belief among Unitarians is broad enough to include agnosticism, humanism, even atheism, on the one hand, and, on the other, a belief in God which can be manifested in a wide range of definitions from that of a 'personal God' to an 'Ultimate Reality.'"

Rosten, op. cited, says at page 158:

"The number of Protestant denominations is less an evidence of the pettiness of Protestants than it is

a testimony of the greatness and manifoldness of God's disclosure of Himself to man."

This ought to allow respondent to express his belief in Deity in one of the manifold ways. Even see what the Unitarians believe at page 187 of *Rosten*, op. cit.:

> "Unitarians worship as earnestly as those of any other faith or church. They worship differently because they believe that every individual has the right to approach ultimate values in his own way, that truth may be found in the teachings of the great prophets of humanity in every age and tradition, and that religious community has the duty of creating such patterns of worship as best serve its needs."

Respondent worshipped by meditation and contemplation (R. 44). This will later be shown to be the deepest form of prayer and respect for Deity. As to Christ, the Unitarians do not believe he is the second Person in the Trinity (*Rosten*, op. cit. p. 189).

Rosten, op. cit., quotes a scientist at page 210:

> "Third, I accept two sets of ideas of God—the everyday concept of an emotional and intuitive God, and the intellectual concept of an abstract God—for the very solid reason that I find both of them personally satisfying. It does not at all worry me that these are two rather different sets of ideas; if an electron can be two wholly inconsistent things, it is a little narrow to expect so much less of God."

Rosten, op. cit., at page 215 speaks of one who says for millions of non-Church goers, that there are many conceptions of God:

> "For strange though it may seem, most of the millions who do not go to Church are religious. Many have a profound faith in God; they simply do not believe that any existing organized religion is a satisfactory expression of God's will. They cannot overlook the many differing conceptions of God—from Christianity to Buddhism and the other great

religions of the East. The monotheism of the Jews is not the same as the Trinitarian conception of Christians. The Protestant conception of man's relation to God is so different from the Catholic that it was one of Luther's chief reasons for revolting from Rome. Baptist conceptions of faith and worship differ as much from Episcopalian as Lutherans differ from Mormons.

"For there are surely many conceptions of God: Matthew Arnold thought of God as the Power-not-ourselves which makes for good; William James believed in a limited but growing God who needs our help in making the good more prevalent. Henri Bergson spoke of the creative force which expresses itself in the evolutionary process. Some scientists speak of a 'cosmic consciousness' which gives meaning to existence. Some philosophers believe in an absolute moral law, embedded in the very structure of the universe. But how many of these conceptions are organized into a formal Church with a rigid ritual and set of ideas about sin or salvation?"

Universalists, Unitarians, Jehovahs Witnesses, Hebrews, Islam and Hindus do not believe in a Trinity, while Catholics and Protestants have varying ideas of Trinity. This certainly doesn't detract from their belief in Deity. Nor does the fact that Christian Scientists believe the Supreme Being is Mind nullify the fact of their belief in a Supreme Being.

If a conscientious objector couldn't deviate from use of the words "Supreme Being," then all Christians and Jews who base their belief on the New or Old Testament would have to be excluded from the Draft Act's deferment. For, not once in either the Old or New Testament do we find the words "Supreme Being." Of course, "Supreme Being" has come to mean Deity or God. If we can substitute, then respondent should be allowed to substitute "Supreme Reality" and "Godness," when he shows, as here, that he means Deity. The use of various words to express

Deity could well be the reason why the Court below expressed surprise at Congress defining "religious training and belief" (R. 32).

Again, if we wanted to be strict in the use of the words "Supreme Being," Mohammedans who use the Name "Allah" for Deity would have to be excluded, especially Syrian Christians who even now use the Name "Allah" for Deity; see "*Encyclopedia of Religion*, Ferm, 1945, page 12, and "*A Dictionary of Religion and Ethics*," op. cit., at page 187:

> "5. High Gods of cosmic scope which are the result of theological or philosophic thought. These are of *three* main types: • • • (b) The spiritual reality behind the phenomenal and illusory world of common life such as the Hindu Brahman • • • the ultimate of the Yomei system of China and Japan • • •.
>
> (c) The Supreme Cosmic Ruler conceived in terms of personality such as Allah in Islam, and Ormazd, the battling god of Zoroastrianism."

The facts that respondent used the word Godness means he had reference to God, or he would not have incorporated the word God, meaning Deity, with his concept of "Godness." This is bolstered by his use of the word "God" a few times (R. 129) and by comparison of his "Godness" with Gandhi's "real presence of God within" (R. 127). When we add "ness" to a word, the addition gives the word an added quality. When respondent added "ness" to make the word "Godness," he was talking of God with a certain value. So say the Dictionaries. See "*Webster's 3rd New International Dictionary*": "ness"—state: condition: quality: degree (goodness) (greatness) (sickness)."

Not only does one look in vain for the words "Supreme Being" in the Old and New Testaments, but even indices of such well-known Encyclopedias as the "*Dictionary of*

the Bible," J. Hastings; *"The International Standard Bible Encylopedia," "Encyclopedia Britannica,"* 1959 ed.; *"Chamber's Encyclopedia,"* 1959; *"Collier's Encyclopedia,"* 1962; *"Jewish Encyclopedia,"* 1906; *"Encyclopedia Americana,"* 1957; *"Encytlopedia of Religion,"* 1945, Ferm; and *"A Dictionary of Religion & Ethics,"* Matthews & Smith, 1921, omit these words. If these words are used, they are used in connection with the discussion of other subjects. For instance, the *"Catholic Encyclopedia,"* 1913, Vol. 14, page 624 uses the words "Supreme Being" in connection with a so-called religious group in France and says:

> "Theophilanthropists, or 'Friends of God and Man', a deistic sect formed in France during the latter part of the French Revolution. The legal substitution of the Catholic Church, the worship of Reason, and the cult of the Supreme Being in place of the Catholic Religion had practically resulted in atheism and immorality."

Even the *"Catholic Encyclopedia,"* 1913, Vol. I at page 217 speaks of Reality:

> "* * * The Absolute in question with Theists is the real not the logical; the Infinite in question is the actual Infinite of realized perfection, not the Infinite of thought * * * Whether our knowledge of this real Absolute, or God, deserves to be characterized as wholly negative, is consequently a distinct problem."
>
> "* * * This is accomplished in turn by denying the limiting modes and imperfect features distinctive of created reality, in order to replace these by the thought of the All-perfect, in the plenitude of whose Being one undivided reality corresponds to our numerous, distinct partial concepts. In the light of this applied corrective we are enabled to attribute to God the perfections manifested in intelligence, will power, personality, without making the objective content of our idea of God merely the human magnified, or a bundle of negations * * *" (p. 218).

Rosten, op. cit., at page 343 compares in parallel columns the definition of God between Protestants, Jews and Catholics. This shows Jews believe in one God "whose reality gives purpose to man and to the world." Then it uses the words "Supreme Being" for God among Catholics, while omitting these words for Protestants and Jews.

"*A Dictionary of Religion & Ethics*," op. cit., at page 183 defines God as "The Supreme Being, the highest object of worship, the creator and source of the existing universe, and the upholder of absolute justice." Respondent believed in God (R. 129), equated his Godness with Gandhi's God within (R. 127), said Godness was the Cause of the Being of the Universe (R. 73) and he contemplated and meditated toward "Supreme Reality" (R. 44). It will be shown that meditation and contemplation are the highest form of worship.

The Court below accepted the fact that respondent believed in God. It said he "comes closer to a traditional reading of 'Supreme Being' than Tillich in one respect, namely, his acceptance of the notion of an original creator and supreme existence, which Tillich finds unacceptable as subjecting God to categories of finitude" (R. 38, note 6).

The above discussion shows that many words can be used to indicate the Name of Deity; and this is so even in one Religion. It isn't the use of words alone, but the intention that tells whether one believes in Deity. The facts at bar show respondent's intention to believe in Deity, when he speaks of a "Supreme Being" a few times, "Supreme Reality," as the creator of man; "Godness," the Cause of the universe, "God, as Love," and "Godness" in comparison with Ghandi's "real presence of God within." He also says man is partly akin to the "Supreme Reality" (this can be compared with Genesis 1:27, that God created man in His Image). Also, when respondent says man can relate to Godness by a vertical transcendental relationship or by a horizontal transcendental relationship, he is refering to a relationship with Deity.

That this relationship to Deity was responsible for respondent's conscientious objection can be seen in Special Form 150 (R. 44-56) and the 43 page statement on religion (R. 72, 83, 86, 93-105, 109, 111-115). In Special Form 150, respondent speaks of the "Supreme Being" and "Supreme Reality," which to him are the same. He also speaks of searching for objective moral standards which his divinely-given reason can accept. He says meditation and contemplation involve the only kind of relationship with the Supreme Reality which is possible, and adds that man is partly akin to the Supreme Reality, something that leads him to ascribe dignity and worth to each individual. He says Life represents all that man is given in an ultimate sense and that death is the loss of things devinely (sic) given to human existence. He calls Life sacred for these reasons: no man ought ever wilfully sacrifice another's life. His conscientious objection is ultimately based on the above convictions (R. 44-56). These statements of belief show not only belief in a Supreme Being, opposition to war by reason thereof, but also superior duties to the Supreme Being. Respondent further shows superior duties owing to Deity by posing the two kinds of relationship to Godness, one a vertical transcendental relationship by which man relates directly to Godness without any concern for his fellow-man, the other an horizontal transcendental relationship by which man relates to Godness, but by which he shows concern for his fellow-man. Respondent adopted the latter relationship (R. 75-83). This relationship causes Respondent to say, that a man relates more closely to Godness who says: "I will not allow myself to be inducted into the armed services because of the way I feel about human life," than a man who says: "I wonder if they'll send me overseas, I always did want to travel * * * " (R. 83). Respondent showed superior duty to Deity, when he says: "A man is obeying a 'higher law' than a social or legal one when he is basing his actions on attitudes that stem most directly from the way he feels about the basic

Givens of Life * * * " (R. 83). For respondent "Givens" comes from Deity, for he says: "Yet, when the individual is dealing with such things as Life, Death, Health, Talent, Love, Time, etc., he is dealing with things that are primarily Given in Existence, while when he is dealing with such things as politics, economics, fashions, etc., he is dealing with things that are primarily Man-made and Transitory" (R. 82).

2.

Section 6(j) of the Draft Act intended to include political, sociological, or philosophical views and a moral code, if these views were based on belief in Deity, within the meaning of religious training and belief. If the views were essentially political, sociological, or philosophical or a merely personal moral code, with no relation to Deity, then they were not included within the meaning of religious training and belief.

This brings us to the question of the meaning of the words "*essentially* political, sociological, or philosophical views or a *merely* personal moral code" (emphasis supplied). While these words appear for the first time in the 1948 Act, they add nothing to the 1940 Act. *Special Monograph No. 11, Vol. 1, "Conscientious Objection," SSS Government Printing Office, 1950* shows that this was intended under the 1940 Act. The Senate and House Reports show the 1948 Act was a substantial reenactment of the 1940 Act. The decision in *Berman* v. *United States,* 156 F. 2d 377, 9th Cir., *supra,* makes explicit what was intended in the use of the above quoted words, and Congress adopted the interpretation of the *Berman* case. First, we can see the 1940 Act meant the same, as expressed in 1948. *Special Monograph No. 11, Vol. 1, "Conscientious Objection,"* op. cit., says at page 68:

> "The first of these issues was whether to cover by the provisions of the Burke-Wadsworth bill conscientious objectors other than those who were mem-

> bers of historic peace churches. Such question came up in considering whether to include members of nonpacifist churches since they ordinarily would hold an individual or minority viewpoint rather than a group or majority approach within their own organizations. This developed into the issue of whether the matter of conscientious objection should be made one at all of personal religious belief. Eventually the discussion turned to conscientious objectors who had arrived at their conclusions by reason of philosophical, political or economic reasoning. The final decision was to eliminate the church membership requirement entirely, but to qualify the provision by making it apply only to a person 'who, by reason of religious training and belief, is conscientiously opposed to participation in war in any form'."

Although the words philosophical and social were not in the 1940 Act, the case of *Berman* v. *United States,* 156 F. 2d 377, 9th Cir. read them into the Act. It made it explicit that a conscientious objector with belief in Deity or in a Supreme Being met the definition of "religious training and belief," while a conscientious objector without belief in Deity or a Supreme Being was without the Act, no matter how high his social or philosophical ideals. The Court said in *Berman* v. *United States,* 156 F. 2d 377, *supra,* at page 381:

> "(P)hilosophy and morals and social policy without the concept of deity cannot be said to be religion in the sense of that term as it is used in the statute."

This statement was combined with the definition of religion in *United States* v. *Macintosh,* 283 U. S. 605, 633-34, 1931, to make the statutory definition of religious training and belief in the 1948 Act (R. 34). The emphasis was put on belief in Deity. Without such belief philosophy, morals or social policy are not recognized as being within the definition. This is made clear, not only in the opinion in *Berman* v. *United States,* 156 F. 2d 377, but also in the *Senate Report* on the 1948 Act, being *S. Rep. 1268, 80th*

Congress, 2d Session, page 14, 1948 which says no more than that a conscientious objector must have belief in a Supreme Being. See the report at page 16, *supra.* It is also demonstrated in the case of *George* v. *United States,* 196 F. 2d 445, 9th Cir. at page 452:

> "So catholic a definition cannot be considered restrictive because it may not be broad enough to include, and actually excludes *certain* political, sociological, moral or philosophical theories unrelated to religion." (Emphasis supplied.)

The substance and practice of well-known historic religions also emphasize belief in Deity, as being the essential part of religion, and they recognize principles, teachings, philosophy, sociology, morality, politics and economy as religious, when based on Deity. The case of *George* v. *United States,* 196 F. 2d 445, *supra,* used the word "certain" political, etc. theories *unrelated to religion* (emphasis supplied). This shows these theories can be related to religion. The fact that well-known religions make philosophy, sociology, economics, politics and morals part of their teachings and practice accounts for the fact that *Berman* v. *United States,* 156 F. 2d 377, 9th Cir. and the 1948 Act made the belief in Deity the important view. This had to be so because, if the Act meant to exclude philosophical, sociological, economic, political and moral beliefs based on Deity, it would have negated true religious training and belief.

Once a registrant bases his conscientious objector claim on a Supreme Being or Deity, his beliefs are no longer *essentially* philosophy, etc., or a *merely* personal moral code. There is such a thing as Religious Philosophy, and this cannot be called "essentially" philosophy, because it is based on Deity. Professor Harry Austryn Wolfson in his *"Philosophy of the Christian Fathers,"* speaks of Christian Philosophy developing with the various Church Fathers, and shows that the Christians borrowed Greek

Philosophy, so long as it led to belief in and acceptance of God. At page 127 he says:

> "To this school of double faith theory, inaugurated by Clement, we shall try to show, belongs also Augustine. Early in his life, on his way to his conversion, he was told by Simplicianus that Paul's warning against 'philosophy and vain deceit' refers only to a certain kind of philosophy, that which Paul himself describes as being 'after the rudiments of the world,' but does not include the philosophy of the Platonists which he says that it 'lead to the belief in God and His Word'."

At page 11, *Wolfson* says:

> "The reasons for the rise of a philosophized Christianity may be grouped under three headings."

And see page 14:

> "Once philosophy was introduced into Christianity in the second century, it had a continuous history among both the Greek Fathers and the Latin Fathers, though as we shall see, not without occasional outbursts of opposition to it."

Referring to Clement, *Wolfson* says at page 49:

> "Though the prophets and apostles did not express themselves in philosophic terms, yet their teaching, which is 'uttered secretly,' contains philosophic thoughts, and these cannot be explained without a knowledge of the arts of philosophy. * * *.
>
> "* * * But as he proceeds to follow Philo in his philosophical interpretation of the high priests' vesture and the tabernacle and its vessels he adds to them also adventual, eschatological, and preexistential explanations taken from the New Testament."

Wolfson goes on to say at page 361:

> "A more philosophical analogy is advanced by Marius Victorinus, The Unity of the Father, the

> Son, and the Holy Spirit is, according to him, analogous to the unity of the soul * * *. A similar analogy from the human soul and its felicities is advanced by Augustine * * *."

In his book *"Religious Philosophy,"* 1961, Harry A. Wolfson also speaks of philosophy in the three religions of Christianity, Judaism and Islam. In the Preface he says:

> "* * * He is the interpreter of Greek philosophy in terms of certain fundamental teachings of his Hebrew Scripture, whereby he revolutionized philosophy and remade it into what became the common philosophy of the three religions with cognate Scriptures, Judaism, Christianity and Islam * * *."

At page 1, *Wolfson* says:

> "* * * As such, Philo was the first who tried to reduce the narratives and laws and exhortations of Scripture to a coherent and closely knit system of thought and thereby produced what may be called scriptural philosophy in contradistinction to pagan Greek philosophy."

At page 217, *Wolfson* expounds:

> "To religious philosophy, taken collectively, the problem of the veracity of Scripture presented itself in three parts * * *."

At page 218, *Wolfson* says:

> "More of a problem to all those religious philosophies was the prophetic teachings, both the laws of Moses and the teachings of the other prophets. Presented in Scripture as special revelations from God to men, these laws and teachings seemed to them to be in need of arguments in support of their veracity".

Dealing with "Religious Philosophy" and "Reality", *"A Dictionary of Religion & Ethics"*, Shailer Mathews & Gerald B. Smith, 1921, says at page 186:

"4. The Influence of modern philosophy on the conception of God.

* * *

"Religious philosophy, then, undertakes to analyze actual experience, and to suggest tenable inferences from this analysis. God is thus conceived as a reality immanent in experience rather than as a being existing in a realm beyond experience. Hegel defined the Absolute in terms of immanence organizing process rather than in terms of the old immutable, self-sufficient 'transcendant Being'. This new metaphysics creates new problems. Since the content of traditional theology was developed as an interpretation of the transcendant God, it cannot be taken over without change in connection with the idea of immanence. There has been a general period of attempted adjustment of the older doctrinal technique to the newer situation, but there is a growing recognition of the fact that the familiar list of 'attributes' must give way to a mode of analysis appropriate to the immanent and evolutionary conception of ultimate reality.

"5. The influence of changing social ideals on the conception of God.

"* * * The most satisfactory evidence of the reality of God is found in the experience of a cooperating, uplifting 'power not ourselves making for righteousness' ".

We cannot say that religious philosophy and the recognition of Reality do not belong within the mean of religious training and belief. Yet much more could be said, but a brief has its limitations. Still, somewhat more needs be said.

In *"A Dictionary of Religion and Ethics"*, *op. cit. at* page 205, the authors deal with "Hinduism" and refer to philosophy in speaking of Hindu Gods:

"VII. Higher Philosophical Aspects.—There is, in general, in the higher levels of Hinduism a tendency toward a theism in which the world is not

regarded as a machine constructed and set in motion by a God who remains apart from it as a responsible moral governor. The soul alone is responsible, determining its own fate, molding it by its own *karma*. The trend of thought is pantheistic. God is immanent in the universe as well as transcendant, and personal melts into impersonal. The power at work in the universe is the same as the power at work in man, as his soul. There is a sameness or an identity of the two. There may be a complete identity in which the world fades away into a mystical unreality; or God, although transcendant remains immanent in a real world.

"* * * The tendency of Hinduism is toward diversity rather than toward unity * * * India has not had a firm social and intellectual nucleus to hold religion together and prevent excesses. The mystical experience, which, by communion with the mysterious superhuman powers, has raised the intensity of individual or group life, hasn't tried to socialize itself".

See also page 338 on philosophy and reality:

"* * * The philosophy of religious experience is no less vitally concerned about the problems of God, freedom, and immorality in the metaphysical aspects, or about the problems of purposiveness in the universe and the ultimate nature of being than is any form of pure metaphysics. It is no less earnest about the question of the reality of God than about the question of the meaning of God. But it bases the study of God reality upon a prior study of his meaning in experience. However, after having identified itself with this method the philosophy of religion is bound to pursue the question of the reality of God from the empirical center of our thought to its furthest speculative circumferences. The study of the reality of God—his objective reality in personal and social experience, in human history, in the cosmos, in the sphere of ultimate metaphysical existence—thus becomes the most inclusive task of the philosophy of religion and the one that opens

the way to the fullest possible synthesis of religious truth".

Referring to the Mormons, *Rosten*, op. cit. at page 136 says:

> "Brigham Young said: 'Our religion is simply the truth. It is all said in this one expression—it embraces all truth, wherever found in all the works of God and man * * *.
>
> "Since the Latter-Day Saints believes that the 'intelligence' each man attains will remain forever with him, his search for knowledge, for truth, for light is not only a permissible privilege but also an inescapable obligation".

Respondent arrived at certain beliefs that his divine reason showed him. This isn't different from what Protestants do. See *Rosten*, op. cit. at page 154:

> "Are Protestants 'Free' to believe 'Anything'? 'Each individual Christian, as a person endowed by God with freedom, must of course believe what he honestly thinks to be true. But every Church * * * has its own standard of belief which its members are expected to affirm' ".

God speaks to all people, say the Quakers. Again, *Rosten*, op. cit. at page 164 speaks:

> "What does a Quaker believe?
>
> "* * * Quakers believe that God speaks to all men and women through the still, small inner voice. This was true not only in the past. God speaks also in the present; his revelation is continuing. This is the Quaker contribution to religious experience".

Speaking of religion without Church attendance, *Rosten*, op. cit., says at page 216:

> "Do the 66,000,000 Americans who refuse to 'believe' in this way have anything in common—except the fact that they do not go to Church? Yes.

> They share an important attitude—the idea that it is possible to be 'religious', moral, decent, without joining a group and worshipping *en masse*. They believe the individual can get as close to the idea of God as any cleric or institution can bring him. They hold the high faith that men are responsible for what they do with their lives, how they think and live. They do not feel the need for 'official' forgiveness or rituals or catechisms to make them men of virtue. They try to lead a life which is honorable, productive, satisfying, right, good—for them. (It may or may not be right or good for someone else.) A good life, to their minds, does not depend upon church attendance. They believe, as did some of the greatest men the human race has produced, that personal morality is not dependent on organized religion".

The limits of a Brief must curtail further discussion to show that "Religious Philosophy" and "essential" philosophy are not the same. The former is based on Deity and is religious in the fullest sence, while the latter is the use of reason without relation to Deity. The latter would be the exception intended by the Draft Act. This construction of the statute applies equally to political, and social views and to a "merely" personal moral code. The word "merely" meant to denote a moral code arrived at by the person alone without reference to Deity. This will now be stated more specifically to show, that as "essentially" doesn't apply to "Religious Philosophy", so it doesn't apply to political or social ideas which have reference to Deity, and that "merely" doesn't apply to a moral code related to Deity. As the case of *Berman* v. *United States*, 156 F. 2d 377, 9 Cir. said, there must be belief in a Supreme Being. It is inconceivable that one could have a moral, social or philosophical belief based on Deity, and yet have it called "non-religious".

The history and substance of religion bring within their realm philosophy, sociology, morals and political economy.

when they are related to Deity. This was the meaning of *Berman* v. *United States,* 156 F. 2d 377 at page 381 that one's

> "philosophy and morals and social policy without the concept of Deity cannot be said to be religion in the sense of that term as it is used in the Statute."

The religious practice of the Church has demonstrated the soundness of this point of view.

The 20th Century has found Religion stressing more than ever social, economic, political and moral works as part of the Religious Church program. On this score, a "*History of Religion in the United States*", Clifton E. Olmstead, 1960, traces the adoption of such a program by the Church. This was a religious program within the meaning of the Act, because it was based on belief in Deity. In fact, respondent's approach to this program could be equated with that of the history of the Church, because respondent couldn't accept a vertical relationship to God that omitted service to man, while he found it necessary to accept an horizontal relationship to God that involved concern for man. The Church had that problem, when it gave up its pietistic and doctrinally conservative position and sought to help man socially and economically. This is how *Olmstead* approached the subject at page 452:

> "* * * But they were powerless to prevent the infiltration of philosophical and scientific conceptions which were driving many educated Methodists away from traditional theologies to a Social Gospel which frankly regarded the holiness approach as tragically irrelevant to the problems of the time * * *.
>
> "While Protestant conservatives were fighting poverty by means of charitable enterprises, a radical group of thinkers were raising a series of embarrassing questions which would force the Church to rethink its entire social program * * * One move-

ment which was at least partially influenced by the philosophy of these men was the Protestant Social Gospel.

"While the main stream of Protestant Christianity in the United States followed a pietistic and doctrinally conservative position which found no culpability in laissez faire capitalism and conceived of social progress in terms of organized charities, there was a group of clerical leaders, small at first, that was beginning to ask searching questions about the ethics of the social and economic structure of American life * * *" (p. 489).

"Since they were pioneers, they were not always certain of the direction they should take and frequently they were in disagreement as they sought a theology which could speak to the condition of their times * * *. Yet there was no doubt as to their position concerning man. They saw him as a child of God with infinite capacities for moral improvement, who could build a Kingdom of God with life to the full * * *. Their Gospel began with man and moved out to God * * *" (pp. 489, 490).

Continuing at page 491, *Olmstead* says:

"Several events during the 1890's signalized the growth in influence of the Social Gospel. One was the founding of the Brotherhood of the Kingdom, a fellowship of persons committed to the work of Christian social reform which met annually from 1893 to 1915 in New York. The members, of whom Walter Rauschenbusch came to be the most prominent, pledged themselves 'to lay stress on the social aims of Christianity.' Through their individual writings and group resolutions they exercised a powerful influence on the contemporary Protestant mind * * *."

Olmstead says at page 492:

"As a religious thinker Rauschenbusch was essentially conservative * * *. His central concept, however, was the Kingdom of God, which he saw is a gradually evolving social order based on justice and

righteousness. In his first book, *Christianity and Social Crisis,* published in 1907, he gave an historical analysis of social religion as it developed from the time of the prophets to apostolic Christianity. He emphasized Biblical concern for the poor and opprest, a concern which he found to be sorely lacking in the modern Capitalistic system * * *."

Olmstead continues at page 493:

"* * * By the opening of the twentieth century a number of seminaries were following the example of Chicago and were establishing chairs in Christian Sociology and ethics."

"* * * Nevertheless, the movement gradually gained momentum in the great evangelical Churches such as the Methodist, Baptist, Congregational, Presbyterian, and Disciples, all of which adopted social creeds and established agencies to put them into practice. The Presbyterian Church, U.S.A., created a Department of Church and Labor in 1903 and called to its superintendency the Rev. Charles Stelzle, a man thoroughly conversant with the problems of Labor. Seven years later, he founded Labor Temple on the East Side of New York as an attempt to bring Christian principles to bear upon the economic and social order * * *."

At page 494, *Olmstead* goes on:

"The capstone of the process was the issuance by the newly founded interdenominational body, the Federal Council of Churches, of a Social Creed of the Churches in 1908, taken largely from the Methodist pronouncement. This creed was modified by the Federal Council four years later. It called for equal rights for all men, uniform divorce laws, child labor laws, laws against the liquor traffic, protection for workers in their places of employment, old age benefits, labor arbitration, one day of rest weekly, reduction of working hours, safeguards for the rights of workers, guaranteed living wages, and the application of Christian principles to the acquisition and use of property. Thus official ecclesiastical approval was given to a movement which for

more than a generation had been in the process of development * * *."

Showing that Christians didn't confine themselves to theological matters, *Olmstead* spoke thus at page 561:

"* * * A far more influential argument was that Christian ethics had no relevance to social problems and the Churches should confine their pronouncements to theological matters. The latter view gained little acceptance among the clergy, but it was generally adopted by the laity * * *."

Speaking of involvement of the Church in social and economic justice at page 580, *Olmstead* said:

"In this setting the Federal Council of Churches undertook in 1932 to issue a revised version of its Social Creed. On the whole it was a decidedly less ambiguous document, forcefully pointing out the dangers of 'speculation and the profit motive' and the need for 'collective bargaining and social action.' New clauses were added on 'Social Planning and control of credit and monetary systems and economic processes for the common good,' and 'Economic justice for the farmer in legislation, financing of agriculture, transportation, and the price of farm products * * *.' Similarly, the Roman Catholic Church developed its program of social reconstruction through the organ of the Catholic Worker Movement in *1933* and the Association of Catholic Trade Unionists in 1937."

The History of Social Development of Religion is also given in Rowe's, *"History of Religion in the United States"*, 1928, pages 149-153. A short quotation will be made from page 129:

"In all these social movements the Church took little part * * * Ministers, discovering the social teaching of Jesus and the Hebrew prophets cried out for justice and kindness, and proclaimed the ethics of a Christian society. Washington Gladden, Josiah Strong, and Walter Rauschenbusch defined

and explained social Christianity. A 'Brotherhood of the Kingdom' was organized in New York in *1893* among a few ministers who were inspired with the social idea. More Church people opposed than heeded them. But the leaven was at work. Small groups inside the Church circles were determined to bring social questions into the Churches and religion into the solution of social questions."

The "*Catholic Encyclopedia*," Vol. 14, page 117 makes clear the difference between what is "essentially" philosophy, economics, politics and sociology and what is religious philosophy, sociology, economics and politics. Even Christ had a religious philosophy. It says:

"* * * But Christian social philosophy did not, for example, draw its dictum of human brotherhood by induction, it received it directly from the lips of Christ * * *. A Christian sociology, therefore, would be one that carries with it always the philosophy of Christ. It could not look with indifference on the varied and complicated social processes around which we live and move. In all of its study and interpretation of what is going on in life—which is largely the function of sociology—it never surrenders concern for what ought to be, however clearly or dimly this 'ought' is seen. While modern sociology is seeking descriptive laws of human desires and is endeavoring to classify human interests and to account for social functions, it is seeking merely for changes, uniformities and interpretations unconcerned with any relation of these to the Divine law. Christian sociology, on the contrary, is actuated mainly by concern about the relations of social changes to the law and Revelation of God. It classifies processes, institutions, and relations as right or wrong, good or bad, and offers to men directive laws of human desire and distinctive standards of social valuations by which social conduct should be governed.

"Economics as it developed under Christian influences related largely to the search for justice in property relations among men rather than to the

evaluation of property itself. Whatever attempts were made to correlate and interpret economic phenomena, they were inspired largely by the search for justice and by the hope of holding industrial relations true to the law of justice as it was understood. Political science as it developed under Christian influence never lost sight of the Divine sanction of civil authority. The study of the forms and changes of government, little as the underlying processes were then understood, never departed far from the thought of the state as a natural and Christian phenomenon and the exercise of its authority as a delegated power from on high. Thus, whatever there was of social science, rudimentary because of the static view of society which obtained, it grew out of the study and application of the moral and social principles derived from the Revelation of God and presented to the believer through the instrumentality of the Church * * *. Scattered here and there throughout theological and moral treatises in Christian literature there is a vast amount of sociological material, which has its value in our time * * *.

"* * * The results established in the fields of the social sciences will always have the greatest import for Christian ethics * * *.

"Closer relations have been established between Christian ethics and sociology in modern days. Modern social conditions with their rapid changes accompanied by ethical and philosophical unrest, have set up a challenge which the Christian Church must meet without hesitation. The Catholic Church has not failed to speak out definitely in the circumstances. The School of Catholic Social Reform, which has reached splendid development on the European Continent represents the closer sympathy between the old Christian ethics and the later sociological investigation. Problems of poverty seen in its organic relations to social organization as a whole, problems and challenges raised by the modern industrial laboring class, demand for a widening of the defense of individual and social respon-

> sibility to meet the facts of modern social power of whatsoever kind, reaffirmations of the rights of individuals have been taken account of in this whole Christian modern movement with the happiest result. There has been produced an abundant literature in which traditional Christian ethics take ample account of modern social investigations and the theories thus formulated have created a movement for social amelioration which is playing a notable part in the present-day history of Europe" (p. 118).

The Hebrew Religion, as noted above, has played an important part in development of social ideals since the time of Moses. It has preached the dignity of man and concern for his social welfare. See, "*Where Judaism Differed,*" Abba Hillel Silver, 1957 at page 155:

> "Judaism alone preached social progress as a reality, as desirable and as the supreme challenge and opportunity. This is the very essence and meaning of Hebraic prophecy. Judaism did not approve of a spiritual egocentrism which sought fulfillment not in humanity and social enterprise but in detached salvationism, non-action, or other worldliness. It demanded inner change, of course, but it did not lightly dismiss the social imperatives. It did not accept a worship of God which does not involve the service of humanity. In matchless eloquence the prophets of Israel called upon men and women to think less of their rituals and their solemnities, the new moons and sabbaths, and more of the weak and the wronged in their midst, the orphan, the widow, and the oppressed. They urged them to believe that society *can* be improved, if men will but walk in the light of the Lord. Zion *can* be redeemed by justice and righteousness. The good society *can* be built on earth, free from war, from exploitation, from fear (Is. 2:1-4; Mic. 4:1-4)."

Much of this sounds like respondent's belief in a horizontal relationship to Deity, because respondent said he

was concerned with man (R. 81-83). Again *Silver* says at page 157:

> "Judaism's objectives in the quest of the good society are clearly defined; the end of war, universal peace, international cooperation under the reign of law, the eradication of poverty, the security of the individual against all forms of social oppression, the achievement of unity and freedom among men, the practice of compassion, of cleaness and of sobriety in living-all difficult but not impossible ideals."

Silver says at page 50:

> "Among the new highways which Judaism built for mankind, its great road toward social justice is of paramount significance in the history of human development * * *."

And *Silver* adds at page 63:

> "More than social justice, more than personal rectitude were taught by Judaism. It called for a quality of humaneness, tenderness, and magnanimity, a sensitiveness to the hurt, physical or mental, of one's fellow men * * *."

Silver shows an economic system is the concern of religion at page 122:

> "* * * There are essential human rights at stake in every economic system, and religion must remain free to defend these rights for which no system provides adequate guarantees."

Rosten, op. cit., shows the various attitudes of the many religious sects on social, political and economic welfare. Page reference only will be made to avoid enlargement of this brief: *Judaism*, page 107; *Methodist*, page 127; *Presbyterian*, page 129; *Quakers*, pages 171, 174, 175; *7th Day Adventists*, page 180; *Unitarians*, pages 190, 194; and see page 150 saying: "Christians and Jews share the same rich heritage of the Old Testament * * * Central

to both faiths is the firm belief in the democratic ideal as a guide to the political and social order."

Addressing ourselves to the question of personal moral code, we find, in addition to what has been said on morals and ethics heretofore, that the well-known religions put great emphasis on morals and ethics. *Sec. 6(j)* of the Act surely wasn't referring to religious ethics, when it spoke of a "merely" personal moral code. The word "merely" limited the moral code to a code not based on Deity. If the word "merely" didn't mean that, then the law would eliminate every religion from its scope. Judaism, Christianity, Islam, Hinduism and the other great religions put much stress on morals. The Ten Commandments, the laws of the Old Testament, such as those contained in Leviticus, the teachings of the Prophets, the teachings of Christ are overflowing with ethical commands and precepts. For example, *Abba Hillel Silver* in *"Where Judaism Differed"* spoke of Ethics at page 86:

> "The ethics of Jesus, too, was standard Jewish ethics, except as regards nonresistance, nonconcern with the material needs of life, and the love of one's enemies—extreme doctrines not part of normative Jewish thought * * * Jesus' moral code, with the exceptions noted was the code of Pharisaic Judaism in his day. The morality which the Church taught the heathen world—again with the exceptions noted—and which appealed so strongly to it, was Jewish morality, the healthy-minded, clean, and regenerative morality of Israel."

The law would certainly not exclude these moral codes, because they are grounded in religion, or belief in Deity. Likewise, any other moral code grounded in Deity could not be excluded. A moral code grounded in Deity cannot be considered "personal," because it is a code involving the person with Deity. It would be personal, if the holder of the code held it for himself without relation to Deity. The Selective Service file reflects respondent's moral code

in relation to his Creator, the Supreme Being, Supreme Reality, Godness and God.

There is an abundance of literature setting out the connection between morals and religion. Only some of it will be quoted. The *"International Standard Bible Encyclopedia,"* op. cit., Vol. II at page 1256 says:

> "(3) The most distinctive characteristic of Jehovah which finally rendered Him and His religion absolutely unique was the moral factor. In saying that Jehovah was a moral God, it is meant that He acted by free choice, in conformity with ends which He set to Himself, and which He also imposed upon His worshippers as their law of conduct."

See also page 1262:

> "5(1) * * * The blessings of the kingdom are moral and spiritual in their nature and the conditions of entrance into it are moral too (Mat. 8:11; 21:31.43; 23-27.38; Lk. 13-29). They are humility, hunger and thirst after righteousness, and the love of mercy, purity and peace (Mt. 5:3-10; 18:1-3; cf. Mt. 20:26-28; 25:34, 7-21; John 3:3; Lk. 17:20.21) * * *."

Also see a *"Dictionary of Religion and Ethics"*, op. cit., at page 204:

> "III Ethical concepts— * * * The Hindu is filled with a passion for God and for the soul, and disregards worldly comfort and social development. 'Is it the function of religion to produce happiness and success here?' Morality and religion do not have in India the close connection that they have in the West where morality is the centre of religion * * *."

Turning again to *Rosten,* op. cit., we find religion in the practice of morality. See page 107:

> "* * * A Reform Jew accepts as binding only the moral laws of the Bible."

See page 23:

> "* * * The Catholic recognizes the unique religious role of the Jewish people before Christ. He shares their belief in God the Father, in the brotherhood of man, and in the moral teachings handed down by the patriarchs and prophets * * *".

See page 54:

> "What Attitude does the Congregationalists Take Toward the Jew?
>
> "* * * Both have a strongly ethical emphasis in their religious teaching * * *."

Respondent has shown his beliefs in the Selective Service Record. He believes in working for the betterment of man and for peace (R. 45-47, 81-83, 93-95, 102, 107, 111-113). The "Givens" of God, such as Life, Death, Health, Talent, Love and Time are the concern of respondent (R. 82), while he considers all else man-made and transitory. This causes him to put emphasis on his usefulness to mankind and to refuse induction into the armed forces because of the way he feels about human life (R. 83). He says a man is obeying a "higher law" than a social or legal one, when he is basing his actions on attitudes that stem from the way he feels about the basic Givens of life and says his position of Acceptance lead him to his decisions and to conscientious objection (R. 93 subd. 6). A reading of the record on "Acceptance" of life will show that respondent was referring to the acceptance of life as given by God. When one "Accepts," he accepts the Givens of Existence—"Life itself"; this means to affirm the worthwhileness of Life, Health, Talent, Reason, Love, etc. and to oppose what is detrimental to them (R. 94). "Acceptance" includes attitudes of "Brotherliness" and "Altruism," upholding the lives of all other individuals and a Brotherhood to them and a vital concern for their welfare (R. 95). It means that one cannot do the smallest act of kindness toward a single child that doesn't affect

the World for the better, and that one cannot fight a single war that doesn't bring about a moral and intellectual atmosphere which is necessary for breeding more violence (R. 98, 99).

Respondent substitutes meditation and contemplation for prayer and ritual, which he says is religious experience in its highest sense (R. 44).[1] Rightly did respondent call his meditation and contemplation religious in the highest sense, for this is what the "*Catholic Encyclopedia,*" Vol. 4, page 329 says on "Contemplative Life":

> "* * * To seek to know and love God more and more is a duty incumbent on every Christian and should be his chief pursuit, and in this wide sense the Christian and contemplative lives are synonymous * * *.
>
> "* * * The act of contemplation, imperfect as it needs must be, is of all human acts one of the most sublime, one of those which render greatest honor to God, bring the greatest good to the soul, and enable it most efficaciously to become a means of salvation and of manifold blessing to others. According to St. Bernard (De Consider. lib I c. VIII), it is the highest form of human worship, as it is essentially an act of adoration and of utter self-surrender of man's whole being. The soul in contemplation is a soul lying prostrate before God, convinced of and confessing its own nothingness and His worthiness to receive all love and and glory and honor and blessings from those He has created. It is a soul lost in Admiration and love of the Eternal Beauty, the sight of which though but a feeble reflection, fill it with a joy more eloquently than speech, testifies that the soul rates that Beauty above all other beauties, and finds in It the contemplation of all its desires. It is the jubilant worship of the whole heart, mind, and soul, the worship 'in spirit and in truth' of the 'true adorers,' such as the Father seeks to adore Him" (John, IV, 23).

[1] The Record reads "mediation" for "meditation" by error.

And see page 330:

> "* * * Not only does contemplation glorify God, but it is most beneficial to the soul itself. Nothing brings the soul into such close union with God, and union with God is the source of all saintliness. Never so well as when contemplating the perfections of God and the grandeur of His works does man see his own imperfections and failings, the vileness of sin, and the paltriness and futility of so many of his labors and undertakings: and thus nothing so grounds him in humility, the prop and bulwark of every other virtue."

Rosten, op. cit., speaks of meditation by Unitarians at page 192:

> "* * * Some Unitarians prefer to call prayer 'meditation' or 'aspiration' * * *."

Further, respondent said "I must live in harmony with the inner light" (R. 130), and so to live is "to experience reality on its deepest levels" (R. 131). Inner effort makes one aware of the spiritual world. It is in the sense of the spiritual world, that of a deeper or ultimate Reality that respondent believes in a Supreme Being (R. 131). This inner effort and inner light make for the contemplation mentioned above and show the spiritual aspect of life rather than its physical aspect. This reaches into and coincides with the Quaker belief of Inner Light. See *Rosten,* op. cit., at page 166:

> "The 'Inward Light' is not conscience. It is what Quakers call 'that of God in every man.' It instructs and transforms the conscience as the true guide of life. Most often it is termed the 'Inner Light' or the 'Light Within.' It exists in all men and women. It resembles the doctrine of the Holy Spirit. But to Quakers, it is known directly, without any mediation by any prophet or priest. For Friends, it is the source of all reality in religion, leading immediately to the experience of God."

In addition, respondent believed in a reality that transcended but included the physical world. It was tied up with his idea of Godness which to him Gandhi once expressed in terms of an indefinable, mysterious power, unseen, yet felt and that transforms the conduct and character of those who have felt the real presence of God within (R. 127). When respondent tied in his beliefs with Gandhi's, he was expressing religion and belief in a Supreme Being. Gandhi was a religious leader whose works respondent read (R. 132). The "*Encyclopedia Britannica*" 14 Ed. Vol. 10, page 15 says of Gandhi:

> "Gandhi, Mohandas Karamchand * * * and founded a colony for his compatriots on Tolstoian lines near Durban * * *.
>
> "The unlettered people who saw his earnestness and asceticism, and heard his simple eloquence, regarded him as a saint, and invested him with the title of Mahatma, or great Soul * * *."

Respondent also read Tolstoi (R. 105) He too was a religious leader. The "*Encyclopedia Britannica*," 14 Ed. Vol. 22 at page 272 says of Tolstoi:

> "The decisive stage in this conversion, he tells us, was the moment when he realized that the whole message of Christ was contained in the words (Matt. 5:39) 'that ye resist not evil.' This doctrine of non-resistance became the foundation of the creed which soon became known as Tolstoyism.
>
> "* * * Tolstoy gave a complete account of his conversion in 'A Confession' (written 1879, revised 1882, pub. 1884). It is a work of great imaginative sincerity and tremendous rhetorical power worthy to rank by the side of the Confessions of St. Augustine * * *.
>
> "At first Tolstoy took no steps to propagate his new faith. It was not till after the revulsion of social misery he had in a visit to the Moscow slums that his religion assumed a definitely social color-

ing, and not till his intimacy with V. O. Chettkov that 'Tolstoyism' became an organized sect, and began to acquire proselytes. This happened in 1884."

3.

One can believe in Deity without knowing the Nature of Him. Respondent's beliefs were not expressed in an orthodox style, but they were religious. The method of religious expression is different in all religions and sects. So are many of their beliefs. Respondent's beliefs met the standards of recognized religions.

Despite the foregoing demonstration of respondent's religious beliefs and their correspondence with well-known religions, the government's petition for certiorari has argued, that respondent's beliefs were peculiar. In the Court below, the government's brief found fault with respondent's assertion that he didn't know the Nature of God (R. 44) as does its present brief. He knew the Supreme Reality existed, but couldn't know His Nature (R. 44). As a matter of fact, no religion has posited the Nature of God. Even Moses saw God in the Form of a Burning Bush, and He appeared in a cloud, *Exodus 3:2-14.* God described Himself to Moses as "I am that I am." See also *Matthew 17:5,* where God appeared in a bright cloud and a voice came out of the cloud. See also, *"The International Standard Bible Encyclopedia,"* op. cit., Vol. 2, page 1256(a):

> "* * * Divine personality and spirituality are never expressly asserted in the Old Testament, but nowhere in the history of religion are they more clearly asserted. The modes of their expression are, however, qualified by anthropomorphisms, by limitations, moral and physical * * *."

And see page 1263:

> "(7) The abstract being of God and His metaphysical attributes are implied but not defined in the New Testament * * *."

See also, the *"Interpreter's Bible,"* op. cit., Vol 7, page 12:

> "Nowhere in the Bible is God regarded as an object of human speculation. Neither in the Old Testament nor in the New is there any metaphysical definition of God * * * The nearest approach to a definition of God in the Old Testament is to be found in the words: 'I am the Lord thy God who brought thee out of the land of Egypt.'"

See also, Abba Hillel Silver, *"Where Judaism Differed,"* op. cit., at pages 117, 118:

> "* * * It is not within the range of man's capacity to learn the true nature of God or fully understand His ways * * *."

A. J. Heschel has also expressed himself on this point n *"Man is not alone—A Philosophy of Religion"* at page 129:

> "There are no concepts which we could appoint to designate the greatness of God or to represent Him to our minds. He is not a being whose existence could be either confirmed or described by our thoughts. He is reality, in the face of which, when becoming alive to its meaning, we are overtaken with a feeling of infinite unworthiness."

While respondent expresses his religious beliefs in modes generally different from that of well-known religions, yet well-known religions and sects differ in their expressions from each other. There can be no clear-cut conformity in religion. A religious man must be genuine and not try to fit himself into a mold he cannot accept. This doesn't make his beliefs peculiar or irreligious. We can again cite *Rosten*, op. cit., to confirm this:

> "Lutherans do not stress prohibitions or blue laws * * *. Such life should achieve a high ethical level without emphasis on rules and regulations. In this Lutheranism is sharply different from some other forms of Protestantism" (p. 114).

"Congregationalists as children of the Reformation believe that the Church stands under the constant judgment of God and must be willing to reform itself, if need be, in every age" (p. 55).

"If a creed be defined as an attempt to define one's faith in the living God, Congregationalists have been among the greatest creed-makers of history—for each particular Congregation is accustomed to write its own creed" (p. 50).

"Quakers consider themselves a 'third way' of Christians, emphasizing fundamentals differently from Roman Catholics and Protestants * * *" (p. 165).

"Prayer, to the Christian Scientist, is scientific and achieves healing; * * *" (p.41).

"* * * Methodists find no scriptural warrant for the Roman Catholic belief in purgatory" (p. 125).

"What is the Morman Philosophy of Freedom? * * *.

"We claim the privilege of worshipping almighty God according to the dictates of our own conscience, and allow all men the same privilege, let them worship how, where, or what they may" (p. 141).

"Unitarians hold that the orthodox Christian world has forgotten and forsaken the real, humane Jesus of the Gospels, and has substituted a 'Christ' of dogmatism, metaphysics, and pagan philosophy. Many Unitarians today prefer to be called 'liberal Christians,' or simply 'religious liberals'. The seeming intolerance and prejudice of many Christians make, it difficult, at times, for Unitarians, to rejoice in the name of 'Christian' (p. 186).

"Do Unitarians Believe the Bible is Divinely Inspired, as 'The Word of God' and Infallible?

"No. The doctrine of revelation of the absolute and indisputable authority of the Bible, is alien to our faith and teaching" (p. 188).

This Court has held, that the Draft Act is not one of Orthodoxy in the case of *Dickinson* v. *United States,* 346 U. S. 389, 395, 1953:

> "• • • That the ordination, doctrine, or manner of preaching that his sect employs diverge from the orthodox and traditional is no concern of ours; of course the statute does not purport to impose a test of orthodoxy."

Besides, as already stated, membership in a sect is no longer required, *Bowles* v. *United States,* 319 U. S. 33, and *Berman* v. *United States,* 156 F. 2d 377, *supra.* The creed of any sect is therefore unnecessary to qualify one for conscientious objector deferment. If it were, there was no purpose in passing the Act without the need to belong to a Church or sect. All that is required is religious training and belief in relation to a Deity. Respondent's record certainly shows belief in a Deity and religious training and belief in relation to Him. Religion is not so severe and harsh, that one must practice various rituals, pray continually and comply with orders of a religious hierarchy. Even the Bible doesn't exact that much. See *John 14:15,* "If ye love me, keep my commandments;" *Micah, 6:8,* "It hath been told thee, O man, what is good. And what the Lord doth require of thee: Only to do justly, and to love mercy, and to walk humbly with Thy God; *Matt. 22:36,* "Master, which is the great commandment in the law? 37. Jesus said unto him, Thou shalt love the Lord they God with all thy heart, and with all they mind. 39. And the second is like unto it. Thou shalt love thy neighbor as thyself." 40. On these two commandments hang all the law of the prophets;" *Isaiah, 1:15,* "Yea, when ye make many prayers, I will not hear; Your hands are full of blood. Wash you, make you clean. Put away the evil of your doings From before Mine eyes, Cease to do evil; Learn to do well; Seek justice, relieve the oppressed, Judge the fatherless, plead for the widow." These are some examples of what religion requires. Respondent met these requirements.

4.

The Department of Justice made two recommendations to the appeal board. When it recommended that Respondent's views were a merely personal moral code, it made an erroneous recommendation. It also recommended that respondent was insincere in his claim. The appeal board did not indicate which recommendation it adopted in making its classification. This made the classification void, since it might have adopted the erroneous ground.

This brings us to the erroneous recommendation of the Department of Justice to the appeal board. The foregoing analysis carries with it the demonstration that the recommendation, in saying that respondent had a personal moral code, was an illegal recommendation, and that it was an erroneous representation of the Act. This illegal recommendation makes the classification void. However, the Department of Justice made an additional recommendation, saying respondent was insincere in his claim (R. 122). The appeal board didn't show, whether it followed the one or the other recommendation. Since the appeal board didn't make clear the ground of its classification, it might have followed the erroneous ground, a procedure which makes the classification void. Such is the rule laid down in *Sicurella* v. *United States*, 348 U. S. 385, 391, 1955:

> "* * * The report of the Department of Justice to the appeal board clearly bases its recommendation on petitioner's willingness to 'fight under some circumstances, namely in defense of his ministry, Kingdom Interests, and in defense of his fellow brethren', and we feel that this error of law by the Department, to which the Appeal Board might naturally look for guidance on such questions, must vitiate the entire proceedings at least where it is not clear that the Board relied on some legitimate ground. Here, where it is impossible to determine on exactly what grounds the Appeal Board decided, the integrity of the Selective Service System demands, at least, that the Government not recommend illegal grounds. There is an important body of lower court cases taking this

> position and we believe that they state the correct rule. Cf. *United States ex rel Levy* v. *Cain*, 149 F. 2d 338, 342, 2 Cir.; *United States* v. *Balogh*, 157 F. 2d 939, 943-44, 2 Cir.; judg. vac. oth. grounds, 329 U. S. 692; *United States* v. *Everngam*, 102 Fed. Supp. 128, (SDWVa 1951)."

This decision was followed in *United States* v. *Erikson*, 149 Fed. Supp. 576, 579, SDNY, 1957:

> "Even assuming, however, that the appeal board could validly have rested its decision on the hearing examiner's impression that the defendant was insincere, there was no evidence that the Board based its decision on this ground rather than on the invalid ground.
>
> • • •
>
> "It can be said with equal force in this case that had the law been accurately stated in the Recommendation of the Department of Justice the decision of the Appeal Board might have been different."

Similar rulings were made in *Shepherd* v. *United States*, 217 F. 2d 942, 9 Cir., 1954; *Batelaan* v. *United States*, 217 F. 2d 946, 947, 9 Cir., 1954; *United States* v. *Hagaman*, 213 F. 2d 86, 89, 3 Cir., 1954; *Pate* v. *United States*, 243 F. 2d 99, 5 Cir., 1957; *Ypparilla* v. *United States*, 219 F. 2d 465, 10 Cir., 1954; and *Taffs* v. *United States*, 208 F. 2d 329, 8 Cir. 1953, cert. den. 74 Supreme Court 532. (See R. 38, 39). While the Court below said there was but one recommendation which was illegal in *Sicurella* v. *United States*, 348 U. S. 385, 392, yet the appeal board could have found *Sicurella* was insincere, as the recommendation wasn't binding on the appeal board, *32 CFR 1626.25*.

The Court below properly held that "Since Jakobson's classification my have rested on an erroneous ground, his conviction cannot stand" (R. 39).

5.

The Government Brief concedes respondent had belief in a Supreme Being and had some obligations to Him. Its contentions that there was basis in fact to deny the claim of conscientious objector, because respondent showed no superior duties to a Supreme Being are not borne out by the record to which it has made reference. Besides, interpretation of a statute is one of law and not of fact.

The Gov. Br.[1] at pages 25, 26 admits superior obligations of respondent to a Supreme Being in at least nine instances. It then goes on to state, that respondent's views were at times personal, and that the local board could believe these were the reasons for the conscientious objector claim. However, the citations to the record do not bear out the government's contentions, as all respondent's views on religion and conscientious objection stemmed from his relation to a Supreme Being.

At page 26, Gov. Br., it says respondent suggested the "Supreme Reality" was nothing more than an appreciation of the importance of man's obligation to his fellow-man; that "religious experience" means contemplation concerning the ultimate nature of man (R. 44). Respondent never said that. What he said was always related to a Supreme Being or his "Supreme Reality." He said "the essence of my religious quest lies * * * in my seeking knowledge about the ultimate nature of *that which was created* by the "Supreme Reality," about Man. It lies in my searching for those objective moral standards which my divinely-given reason can accept as most satisfying the ultimate nature of man." This is a religious position, for it deals not only with man, but man created by the "Supreme Reality" and a use of moral standards stemming from "divine-reason." This can be equated to God's concern for man in the ten commandments, when he told man to obey the Commandments regarding his fellow-man. Because of a "Supreme Reality," respondent had moral obligations to his fellow-man.

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[1] The words "Gov. Br." refer to the Government's Brief.

Page 26 of Gov. Br. also didn't think respondent's "most important religious law"—that "no man ought ever to wilfully sacrifice another man's life as a means to any other end," qualified as a superior duty (R. 46). This statement is related to a Supreme Being, for preceding it we find respondent saying "that Life represents all that Man is ever *given* in an ultimate sense, everything else is created and arranged by man * * * that death means not only the loss of those things that men have contributed to human existence, but also of those that are in my opinion devinely (*sic.*) given to human existence—breath, warmth, the power of reason, the joy of the sense of aliveness, etc. For these reasons I feel, and have for a long time felt, that my most basic value judgment, the one I feel most strongly about, is that Life is sacred; that it is a higher value than all other values * * *." When the context is read in this light, we find respondent expressing a religious statement, for he says Life is given to man and is sacred, and death ends things divinely given to man. This certainly has reference to Deity and isn't personal. He won't kill, because life is given to man, is sacred and belongs to things that are divine.

Further, at page 26, Gov. Br., fault is found with respondent not knowing the nature of the "Supreme Reality" or "Godness." As has been stated under Point One, pages 57, 58, no religion has asserted knowledge of the nature of Deity. This objection is without merit. The Gov. Br., page 26, then asserts respondent is of the view, that an individual forms or accepts his fundamental attitudes to life on the basis of what he knows about this world which represents the limits of what he can know (R. 44, 73). This is not a correct statement of what respondent said. Nowhere at (R. 44) is there such a statement, for respondent speaks of being incapable of knowing the nature of the "Supreme Reality" and His Existence, and his religious quest in seeking knowledge about the nature of man,

created by the "Supreme Reality," his searching for moral standards acceptable to his divine reason, and meditation and contemplation which involve a relationship with "Supreme Reality," or a relation with that created by "Supreme Reality" (R. 44). Nor does a reading of (R. 73) bear out the statement of the government. Respondent spoke of the traditional conception of religion, and says an individual with such a conception accepts certain things to be True about "this world," and certain things to be speculative possibilities about "the Next." From these, the traditionalist forms his fundamental attitudes of Life. But this doesn't apply to respondent who has non-dogmatic beliefs, for in the non-dogmatic idea of religion held by respondent an individual forms his fundamental attitudes only on the basis of certain things "that he feels to represent the limits of what he, as a human being, can know" (R.73).

Page 27, Gov. Br., says respondent disagreed with theism, although it was closer the truth than atheism (R. 128). Respondent didn't disagree, he said "I do not posit the assertion of theism." Yet, respondent can have religious beliefs without adopting theistic beliefs. Theistic beliefs are those handed down by well-known religions. As already pointed out under Point One (*supra*, pp. 41, 42) man can be religious without accepting the creed of a Church. Besides, Paul Tillich said: "Theism in all its forms is transcended in the experience we have called absolute faith • • •." See this in opinion below, *United States* v. *Jakobson*, 325 F. 2d 409, 416 (R. 37 note). Gov. Br. 28 said "We would not question the proposition that one subscribing to Professor Tillich's views is a believer in religion both in the sense of the First Amendment and of the relevant statute• • •."

Again, at page 27 Gov. Br., it is erroneously stated that respondent based his opposition to war on sociological and political judgments that war harms humanity (R. 46-48,

51-52). Respondent said his conscientious opposition to war was based on the above convictions (R. 46). These convictions refer to his belief in a Supreme Being who created man (R. 44), man's spirituality, his kinship with the "Supreme Reality," man's dignity and worth because of this, that Life is all that is ever *given* man (R. 45) for these reasons Life is sacred and no man ought wilfully sacrifice another man's life (R. 46). It is on this basis that the explanation is given as to respondent's opposition to war (R. 46). Even in giving the reasons, respondent says under the subdivisions (1) war is incompatible with my most sacred convictions. (2) even the most depraved individuals have a spiritual aspect, as all men stand in the same relationship to "Supreme Reality," and it is incompatible with his most sacred convictions to reduce the killing of the concrete human being to statistical necessity. (3) we have a system of values which sees Man debased a non-spiritual entity. Wars and their preparation contradict his most sacred convictions. (4) he asks non-combatant classification which is compatible with his deepest convictions, grounded in his religious beliefs (R. 46-48). Also, respondent's reasons for opposing force and war (R. 51-52) are relied on by the government, Gov. Br. page 27, as showing sociological and political judgment. Actually, these reasons are preceded by a statement in answer to Question 5 of Special Form 150 (R. 43) asking "Under what circumstances, if any, do you believe in the use of force?" Respondent replied his attitudes are a direct result of his basic religious convictions relating to the sanctity of Life and the dignity of the individual (R. 50); each of which has already been shown to stem from respondent's belief in a Supreme Being (R. 44-46). He again speaks of the sanctity of life and that life is sacred (R. 51). He then gives his reason why the war situation is not an analogy to a "suppose" situation, and adds because of his attitude toward war, he would not advocate it as use of force (R. 51). This attitude toward war has already been shown to depend on

belief in a Supreme Being. The reasons given cannot be considered political or [illegible]al, because they are based on belief in a Supreme Being. Besides, the question called for a personal answer. Even so, respondent says in subd. (5) "In the war situation, one *can* stand for the sanctity of life, by simply not killing when his most sacred convictions tell him not to kill" (R. 52). And subdivisions (1), (2) (3) and (4) relate to the hurt and death of human beings, something that respondent had made clear he opposed by reason of his belief in "Supreme Reality" (R. 44-46). In addition, the answer to Question 5 is concluded by saying under no circumstances could respondent advocate use of war with disregard for dignity of individuals and all the other characteristics he has given. This constant reference back shows that the entire document must be considered, because it is in the context of the entire document, that respondent makes clear his belief in Deity and Man's position in relation to Deity and refusal to take life for that reason.

On the other hand, even if we were to regard some of these beliefs as personal, the essential religious beliefs against war would still compel a conscientious objector classification. This is so, because the local board found respondent honest (R. 118). When the local board found respondent honest, it meant it accepted his statements on religious opposition to war. Since the local board accepted respondent's religious statements as true, it had the necessary facts to make the conscientious objector classification. The addition of personal reasons for opposition to war could not take anything away from the conscientious objector showing already made. The religious reasons and the personal ones were correlative. There is authority for this in *Sicurella* v. *United States*, 348 U. S. 385 and *United States ex rel. Phillips* v. *Downer*, 135 F. 2d 521, 2nd Cir. This Court said in *Sicurella* v. *United States*, 348 U. S. 385, 391:

> "* * * We believe, however, that if the requisite objection to participation in war exists, it makes no difference that a registrant also claims, on religious

> grounds, other exemptions which are not covered by the Act. Once he comes within sec. 6(j) he does not forfeit its coverage because of his other beliefs which may extend beyond the exemption granted by Congress."

See also *United States ex rel. Phillips* v. *Downer*, 135 F. 2d 521; 2nd Cir. at 525:

> "The Hearing Officer does refer somewhat to a point here stressed by the Government, namely, that the play contains a criticism of the effects not merely of Fascism abroad, but of finance capitalism in this country, as portrayed by Hungryman himself, with some statements that a division of 'the plunder' must be had. But whatever the weight of the intended criticism, it is not linked to any definite political movement, nor is it clearly enough defined to be considered a political conclusion in itself. And even if it were, it appears but a correlative, and not the defining limitation, of the belief against war. We do not think it can properly be resorted to as overthrowing the force of the latter, * * *."

In view of the above showing, the reference in Gov. Br. page 27 to the local board's finding of respondent's beliefs to be essentially social or philosophical or a merely personal moral code (R. 116), and that his beliefs were not based on religious training and belief, nor did they reflect superior duties, carries no weight. The local board could not make that finding, once it found respondent honest in his religious beliefs. When it made that finding, it meant it was interpreting the statute to exclude the religious views stated by respondent. The fact that the local board said respondent would use limited force in certain cases does not detract from his religious position. The use of force was held permissible by a conscientious objector in *Sicurella* v. *United States*, 348 U. S. 385, 391 and in *Taffs* v. *United States*, 208 F. 2d 329, 8th Cir. 1953, cert. den. 74 S. Ct. 532. Even respondent's use of limited force relates to his duties to a Supreme Being, for he preceded his statement on force with a statement "My attitudes to the

use of force are a direct result of my basic religious convictions relating to the sanctity of Life and the dignity of the individual" (R. 50). And even if in this one instance cited by the board (R. 116), respondent showed a personal belief, it was not enough to bar the religious showings and duties to a Supreme Being already made.

The above argument as to the validity of the local board findings also holds true for the findings of the Hearing Officer and the Department of Justice, Gov. Br. 27 (R. 122-123), for the Hearing Officer and the Department agreed with the local board, thus agreeing with the local board's acceptance of the honest position of respondent in stating his religious beliefs. It didn't mean that the religious statements were rejected and the personal ones accepted, if there were any personal beliefs. It further meant, that the Hearing Officer and the Department interpreted the statute to exclude respondent's religious position. This was an erroneous interpretation of the statute and made the recommendation to the appeal board erroneous. The Government contention that the personal statements alone were accepted by the authorities, for the purpose of showing basis in fact is without merit. As above shown, the religious showing, having been found honest, could not be rejected.

The government contends that this Court might find the "exemption applies to a person holding respondent's beliefs" (Gov. Br. 28), but says there is basis in fact to uphold the finding of the boards. The question of interpreting the statute is one of law, as the boards had to pass on the religious beliefs, as stated by respondent. The local board had accepted respondent's religious beliefs as true, when it found him honest. The Hearing Officer and the Department agreed with the local board on its finding. They even interpreted respondent's statement on Religion in GX 42 (R. 127-129) to be a discourse on his concept of morality and conduct (R. 122), whereas the statement spoke of his religious beliefs in relation to Godness which were

similar to Gandhi's presence of God within and stated "God is Love". Further the report that respondent's beliefs were a moral code was a report on his beliefs *in toto* (R. 122). This meant they all interpreted the religious statements, as not bringing respondent within the definition of religious training and belief. This made the report illegal. This was not a question of basis, for once the religious statements of respondent had been found to be true, the only question was whether they met the statute. The government concedes this Court might find the exemption applies to respondent, and it should so find, in view of the fact that the question of basis in fact is not in the case. The record shows the boards could not have made their findings on the basis of personal reasons of respondent, in the face of their acceptance of his religious statements. In addition, there is no question of basis in fact, because all statements of respondent related to his religious beliefs and duties. The government either said things in its brief that respondent didn't say or isolated them in such a way, that they were taken out of context.

It is important to note that the government concedes some of respondent's views resemble those of the great theologian, Paul Tillich, Gov. Br. 28. These views cited in the Court below are important aspects of religion (R. 36-38). One doesn't have to agree with a great theologian in all views, to be considered religious. The government fails to point out, wherein any differences between respondent and Tillich make him non-religious.

The government's conclusion that respondent's views rest on a concept of man's relation to man, rather than on an obligation to a Supreme Being is contradicted by the record. Respondent sought knowledge about man who was created by the Supreme Reality. He searched for moral standards which his divinely-given reason could accept as most closely satisfying the ultimate nature of man, and his "religious experience" involves the only kind of relationship with the "Supreme Reality," a relationship

with that which the "Supreme Reality" has created (R. 44).. It must, therefore, follow that respondent's relation to man was based on an obligation to "Supreme Reality." This is why he said man is partly akin to the "Supreme Realty," has dignity and worth, that Life is *given*, that Life is sacred and no man ought wilfully sacrifice another man's life (R. 45, 46). It was also why he says:

> "And a man who says: 'I will not allow myself to be inducted into the armed services because of the way I feel about human Life * * * etc.', is relating more closely to Godness than a man who says: 'I wonder if they'll send me overseas; I always did want to travel * * *'." (R. 83)

TWO

Section 6(j) of the Draft Act is unconstitutional, if the definition of a conscientious objector meant to exclude from recognition the views stated by respondent in his claim for conscientious objector status.

A.

A Statute Should Be Construed to Avoid Grave and Doubtful Constitutional Questions.

Congress has spoken in *sec. 6(j)* of the Draft Act, as to what conscientious objectors it meant to defer. Those conscientious objectors who based their opposition to participation in war because of religious training and belief were granted deferment. There is set forth in the Selective Service record of respondent, discussed under Point One, abundant material indicating that respondent had religious training and belief within the meaning of the Act. It has already been shown, that respondent had beliefs that resembled those of well-known religions. In addition, the Court below has taken note of the resemblance of respondent's beliefs to those of the world-renowned theologian, Paul Tillich (R. 36 note 5). Some of these beliefs have been adopted by the Bishop of Woolwich, as stated in the note.

The Court below, in *United States* v. *Jakobson*, 325 U. S. 409, said:

> "* * * The freedom which the Constitution protects is the freedom to exercise the religion of one's choice; a statute limited to certain religions would restrict the free exercise of the disfavored ones. The time honored principle of construing a statute not only to escape unconstitutionality but to avoid 'grave and doubtful constitutional questions,' *United States* v. *Delaware U Hudson Co.*, 213 U. S. 366, 407-08 (1909), thus dictates reading the definition of 'religious training and belief' in sec. 6(j) as broadly as the words permit."

The opinion below has presented the argument on this point in too scholarly a way for the undersigned to attempt to add anything to it, except as noted below.

While respondent doesn't feel it is necessary to reach this point, in view of his explicit showing of religious training and belief under the Statute, as detailed under Point One, yet a consideration of this question, as expounded by Judge Friendly, adds strength to respondent's contentions. Even the Court below thought respondent met the requirements for conscientious objector status, as stated in *Berman* v. *United States*, 156 F. 2d 377, 9 Cir., when it said in *United States* v. *Jakobson*, 325 F. 2d 409 (R. 36):

> "We are by no means certain that the Court that rejected Berman's claim because his evidence showed no belief in 'a supreme power' of any kind would have rejected Jakobson's * * *."

This statement was made after discussing the constitutional question (R. 35).

Moreover, the Draft Act leaves no doubt that all religions must be given equal consideration, for it says in *sec. 1(c) of the Universal Military Training and Service Act*, 50 U. S. C. A. Apx. 451(c):

> "The Congress further declares that in a free society the obligations and privileges of serving in

> the armed forces and the reserve components thereof should be shared generally, in accordance with a system of selection which is fair and just, and which is consistent with the maintenance of an effective national economy."

Respondent contends that a classification that makes an arbitrary distinction between Supreme Being or merely because of the use of different Names for Deity cannot stand under the provisions of *sec. 1(c) or sec. 6(j) of the Act.* It would be a discrimination to say that respondent didn't believe in the same Supreme Being that recognized religions do, when he said the Supreme Being created man or the "existence of Man is the *result* of the existence of the Supreme Reality" (R. 44) or "rather it lies in my seeking for knowledge about the ultimate nature of *that which was created by* the Supreme Reality, namely, about Man" (R. 44) or "Godness is That Which is the Ultimate Cause for the fact of the Being of the Universe" (R. 73), since that is what all religions say, some in the same words, others in other words. Further, respondent said God is love (R. 129), and he equated his beliefs with Gandhi's "God within" (R. 127). He also referred to the same Deity mentioned in the Old Testament, when he said "For this reason—Man's spirituality—I feel it is valid to say that Man is partly akin to the Supreme Reality" (R. 45). Nothing in the Draft Act allows a board to draw a line that would separate definite beliefs in a Supreme Being into accepted or rejected categories. No one can know the Nature of God and no religion can say it has the only knowledge of God, especially when so many religions and sects disagree on the nature of God and in their creeds, as stated in Point One. The Court below said the Statute doesn't require belief in an anthropomorphic God (R. 35).

Discrimination is not allowed because of creed or membership in a religious organization. This is provided in the Selective Service Regulations, 32 C. F. R. 1622.1(d) which says:

> "In classifying a registrant there shall be no discrimination for or against him because of his race, creed, or color, or because of his membership or activity in any labor, political, religious, or other organization. Each registrant shall receive equal justice."

The law should be enforced equally as to all religions under the Statute and Regulations, as well as under the First Amendment to the Constitution. Besides, if the Act is construed to deny equal protection to respondent's religious beliefs, it prevents the free exercise of his religion. Even assuming Congress can draft men for military service under *Article I, sec. 8 of the Constitution*, this Article must be construed co-equally with the First Amendment. All provisions of the Constitution should be so construed, as not to interfere with the others. See, *"Constitutional Law,"* 16 C. J. S. sec. 23, page 92 on this:

> "As far as possible, each provision should be construed so as to harmonize with all the others, with a view to giving effect to each and every provision in so far as it shall be consistent with a construction of the instrument as a whole."

Congress didn't intend a narrow construction of religious training and belief nor of Deity. See opinion below, (R. 36). In fact, it couldn't have so intended, for it would have left the construction of the words "Supreme Being" to the mercy of the draft boards. The Constitution, as well as the Act, requires that a belief in Deity must be given equal recognition with beliefs of well-known religions (Gov. Br. 23). There is no way to construe the words "Supreme Being," so as to include well-known religions and reject those not well-known. Even well-known religions don't agree on what they call "Supreme Being." There is disagreement on the Trinity, on the immanence of God, his personality, and his having no concern for the world, among other things. All of this has been discussed under Point One.

In the companion case of *United States* v. *Seeger*, 326 F. 2d 846, 2 Cir., the government had argued for a liberal construction of the "religious training and belief" clause. The opinion says:

> "* * * In essence, the government appears to argue that the spirit of the 'free exercise' clause is satisfied when religious objectors are permitted to avoid a course of conduct which their religion condemns. Stated in other words, the government's argument is that Congress was merely seeking to give the greatest possible latitude to the free exercise of religion when it enacted the conscientious objector provisions; since the Constitution does not require that a similar freedom be afforded the exercise of nonreligious beliefs, it is reasonable to distinguish between them." (p. 852)

See Gov. Br. in *Seeger*, page 75, last sentence of first full paragraph.

THREE

The 1-A classification was without basis in fact.

The local board heard respondent and found him sincere (R. 118). The F. B. I. investigation produced a report that was entirely favorable to the claim (R. 124-126). Respondent's references spoke highly of him and of his claim (R. 58-61). There was no indication in the report of the hearing officer or the recommendation of the Department of Justice to indicate there was anything false in the claim or that impugned registrant's demeanor or veracity. The hearing officer made a report that culminated in a finding of insincerity, because of inferences that were unwarranted.

The hearing officer said respondent requested Special Form 150 on the date he was informed of his selection (R. 122). This conveyed the impression that respondent was waiting to make his claim, as soon as he would hear of his passing the physical examination. But respondent requested Form 150 nearly a month after notification of

passing the physical examination, after he had inquired of a Quaker organization about the validity of his conscientious objector claim (R. 133). The reason for the inquiry at the Quaker organization was, that a Clerk of the local board had misinformed respondent about his right to make a conscientious objector claim about six months before he took his physical examination (R. 133). There was, therefore, no reason to imply that the claim was made in bad faith, after respondent had passed the physical examination. Registrants may make successive claims for deferment, if they are made in good faith. This also applies to the hearing officer's reference to respondent's request for 1-O classification, after he had requested 1-A-O (R. 122). A further unwarranted finding of the hearing officer was that registrant hadn't given much consideration to his views or thought them through, until he had passed the physical examination. This, again, was caused by the aforesaid erroneous information given by the Clerk of the local board, that respondent didn't qualify for the status of conscientious objector (R. 133; 24). The hearing officer unjustifiably referred to the fact that registrant had frankly hoped he would be 4-F (R. 122). The fact that registrant had a back condition and hoped for deferment on that ground could not be used against him, as he had a right to make that claim for deferment, as any other claim. See *32 CFR 1629*. He had made the claim in form 100, and the government conceded on the trial that the claim wasn't a "phony" one or untrue (R. 8). Since respondent had the right to make the claim of back injury and deferment on that ground, no comment could be made on it, to throw suspicion of insincerity on the claim.

A classification made without basis in fact cannot stand. *Estep* v. *United States*, 327 U. S. 114, 1946. A classification denying conscientious objector status, when all facts favor the claim cannot stand. *Schuman* v. *United States*, 208 F. 2d 801, 9 Cir., 1953; *Williams* v. *United States*, 216 F. 2d 350, 5 Cir.; *Annett* v. *United States*, 205 F. 2d 689, 10 Cir.,

1953; *United States* v. *Pekarsky*, 207 F. 2d 930, 2 Cir., 1953; *United States* v. *Hartman*, 209 F. 2d 366, 2 Cir., 1954; *United States* v. *Bortlik*, 122 Fed. Supp. 225, M. D. Pa., 1954; *Jessen* v. *United States*, 212 F. 2d 897, 10 Cir., 1954; *Taffs* v. *United States*, 208 F. 2d 329, 8 Cir., cert. den. 74 Sup. Court 532.

The local board found respondent honest (R. 118). This carries weight, especially considering the appeal board didn't indicate, that it had found insincerity. Demeanor before a local board is important. So said the Court in *Tomlinson* v. *United States*, 216 F. 2d 12, 9th Cir., 1954:

> "* * * Attitudes and demeanors which develop at the time of such a person's personal appearance may well be controlling factors * * *."

In *White* v. *United States*, 215 F. 2d 782, 9th Cir., 1954, the Court gave weight to the local board observation of registrant. It said at page 787:

> "The action of the appeal board in confirming the classification cannot be said to be without basis in fact in view of the appeal board's knowledge that the local board's determination had been arrived at after its opportunity to observe the registrant's demeanor during his personal appearance * * *."

And see *United States ex rel. Levy* v. *Cain*, 149 F. 2d 338, 341, 2nd Cir., where the Court said:

> "* * * (W)e must hesitate to reverse the Board's findings for a registrant's appearance may be enough to justify distrust in the good faith of his professions, especially upon that issue, comportment and general appearance are often the best index of sincerity * * *."

The Department of Justice didn't take notice that successive honest claims for deferment are permissible. *Taffs* v. *United States*, 208 F. 2d 329, 331, 8th Cir.; *Witmer* v.

United States, 348 U. S. 375, 1955; *United States* v. *Peebles*, 220 F. 2d 114, 118, 7th Cir., 1955.

Registrant said his views upon conscientious objection were formed and developed over a period of time (R. 70). It therefore would not have been possible to present his conscientious objector claim, until he had fully formulated his position. He continued to reflect on the matter, after he had received form 150 (R. 70). This should give no ground for suspicion against the conscientious objector claim.

CONCLUSION

For the reasons heretofore stated, it is respectfully submitted that the judgment below should be affirmed.

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